TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 417.

ISADORE MINDER, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPERIOR COURT OF BIBB COUNTY, STATE OF GEORGIA.

FILED SEPTEMBER 28, 1901.

(12,276.)

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1 Be it remembered that there came on for trial at the regular November term, 1900, of Bibb superior court a certain cause then and there pending between the State of Georgia and I. Minder, who is charged with the offense of murder. He was tried on a bill of indictment charging him with the offense of murder and was convicted by the jury and sentenced to hang by his honor Willian H. Felton, jr., judge of said court then and there presiding. During said term and before the adjournment thereof the defendant, through his counsel, made a motion for new trial on several grounds, all of which are set out in said motion and amended motion for new trial. On the 15th day of March, 1901, his honor William H. Felton, jr., judge of said court, granted a rule nisi calling upon the solicitor-general to show cause as soon as counsel could be heard why a new trial should not be granted on each and all of the grounds thereof. Said motion was set for a hearing in Macon, Georgia, at Chambers on the 29th day of March, 1901; at which said time the motion was not heard, but continued by proper order of the court until the 15th day of April, 1901, at which time said motion came on to be heard; and after considering the same and hearing the argument on both sides, and after a brief of evidence had been agreed to by the counsel and all the grounds of the motion for new trial had been approved as true and consistent as to what transpired on the trial of said case, his honor William H. Felton, jr., judge of said court, on the 18th day of April, 1901, overruled and refused said motion for new trial on all the grounds
2 thereof; to which said ruling the defendant then and there excepted and now excepts and assigns the same as error, that the court erred in overruling and refusing said motion for new trial on all the grounds thereof, and in not granting a new trial to the defendant.

The defendant specifies as a material part of the record to be sent up in a transcript of the record to the present term of the supreme court of Georgia.

1st. Bill of indictment.

2d. Motion for new trial and amended motion and all orders thereon.

3d. Brief of evidence.

4th. Motion to continue said case on the ground of absent witnesses.

5th. Charge of the court.

6th. Verdict of the jury and sentence of the court.

7th. Rule nisi and the order overruling and refusing said motion for new trial.

And now comes the defendant within twenty days after the overruling said motion for new trial and within twenty days after the rendition of said judgment and tenders this his bill of exceptions and asks that the same be signed, certified, and allowed according to the form of the statute in such cases made and provided, that the errors alleged to have been committed be reviewed and corrected.

And the defendant will ever pray.

JOHN RANDOLPH COOPER,
HERMAN BRASCH,
Counsel for Minder, P. O. Address, Macon, Ga.

3 JUDGE'S CERTIFICATE.

GEORGIA, BIBB COUNTY.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Bibb County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term, 1901, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

Witness my hand and official signature this the 6th day of May, 1901.

W. H. FELTON, Jr.,
Judge Superior Courts, Macon Circuit.

GEORGIA, BIBB COUNTY,
Clerk's Office, Superior Court:

I, Robert A. Nisbet, clerk of said court, do certify that the foregoing three pages constitute the original bill of exceptions in the within-stated case, just as the same was filed in said clerk's office.

Witness my official signature and seal of office this 16th day of May, 1901.

[Seal of superior court, Bibb County, Ga.] ROBT. A. NISBET, *Clerk.*

GEORGIA, BIBB COUNTY:

Due and legal service acknowledged on the within, above, and foregoing original bill of exceptions in the case therein stated; copy
4 and all further service or notice in the premises waived.

This the 17th day of May, 1901.

WM. BRUNSON,
Sol. Genl., M. C., P. O., Macon, Ga.

Original bill of exceptions filed in office this 13th day of May, 1901. Robt. A. Nisbet, clerk of superior court. No. 39 criminal docket March term, 1901. Supreme court of Georgia. Minder v. The State Bill of exceptions. Filed in office May 17, 1901. Logan Bleckley D. C. S. C., Ga.

5 GEORGIA, BIBB COUNTY:

The grand jurors selected, chosen, and sworn for the county of Bibb, to wit:

1. Holmes Johnson, foreman.

2. A. D. Calhoun.	13. Geo. A. Dure.
3. J. W. Fielder.	14. S. Guthman.
4. J. H. B. Wilder.	15. W. A. Goodyear.
5. F. A. Coburn.	16. Thos. Henley.
6. W. S. Solomon.	17. O. E. Massey.
7. J. W. Nisbet.	18. T. J. Ware.
8. J. T. Baker.	19. R. J. Taylor.
9. T. E. Merritt.	20.
10. Geo. B. Jewett.	21.
11. C. W. Howard.	22.
12. W. E. Hill.	23.

in the name and behalf of the citizens of Georgia, charge and accuse and specially present I. Minder, of the county and State aforesaid, with the offense of murder; for that the said I. Minder, in the county aforesaid, on the 22d day of October, in the year of our Lord nineteen hundred, did, with force and arms unlawfully, wilfully, deliberately, feloniously, and of his malice aforethought, in and upon A. J. Mahoney, make an assault, and with a certain knife, the same being a weapon likely to produce death, did unlawfully, wilfully, deliberately, and of his malice aforethought, cut, wound, and stab A. J. Mahoney, thereby giving said A. J. Mahoney a mortal wound, of which said wound said A. J. Mahoney then and there died; and so the jurors aforesaid, upon their oaths aforesaid, do say that, by the manner and means aforesaid, he, the said I. Minder,
unlawfully, wilfully, deliberately, feloniously, and of his malice
6 aforethought, did kill and murder said A. J. Mahoney, contrary to the laws of said State, the good order, peace, and dignity thereof.

ROBT. HODGES, *Solicitor-General.*

SPECIAL PRESENTMENT.

November term superior court, 1900. November 5th, 1900.

The defendant, being arraigned, pleads not guilty.

WM. BRUNSON, *Sol. Genl.*

March 11th, 1901.

THE STATE
v.
ISADORE MINDER.

In the superior court of Bibb County, Nov. term, 1900. Bill of indictment for murder. Verdict of guilty. Motion for new trial.

And now comes the defendant in the above-stated case, through his counsel, Jno. R. Cooper, esq., and being dissatisfied with the verdict of the jury and the judgment of the court, and moves for a new trial on the following grounds, to wit:

1. Because the verdict of the jury in said case is contrary to law.
2. Because the verdict of the jury in said case is contrary to the evidence.
3. Because the verdict of the jury in said case is against the weight of the evidence and without evidence to support it.

Wherefore the defendant asks that these his grounds for a motion for new trial be inquired into, and prays a new trial may be granted to him.

JNO. R. COOPER,
HERMAN BRASCH,
Defendant's Counsel.

The grounds of the foregoing motion for new trial read and
7 considered. Ordered that the solicitor-general show cause as soon as counsel can be heard why a new trial should not be granted on each and all the grounds thereof, and that said motion be set for a hearing at Macon, Ga., at chambers, the 29th day of March, 1901.

It appearing to the court that it is impossible to file a brief of evidence with this motion, it is therefore ordered that the defendant's counsel have until the hearing of this motion for new trial to prepare and perfect a brief of evidence had on the trial of said case, subject to the approval of the court, and he have the right to amend his motion for a new trial.

Ordered further, that the verdict and sentence be suspended and superseded in said case, to abide the final order of the court in the premises.

Ordered further, that this rule nisi be served upon the solicitor-general, this the 15th day of March, 1901.

W. H. Felton, Jr., *J. S. C. M. C.*

Due and legal service of the within motion for a new trial acknowledged, and copy and rule nisi and all other service waived. This March 15th, 1901.

Wm. Brunson, *Solicitor-General M. C.*

It appearing to the court that the official stenographer has not yet filed the evidence and charge of the court in said case;

Ordered that the said motion for new trial be continued until 15th day of April, 1901, and that counsel have until the hearing to file a brief of evidence, subject to the approval of the court, and that he have all the right given him in the first order. March 29th, 1901.

8 W. H. Felton, Jr., *J. S. C. M. C.*

The State }
v. }
I. Minder. }

In Bibb superior court, November term, 1900. Bill of indictment for murder. Amended motion for new trial.

And now comes the defendant, through his counsel in the above-stated case, and moves to amend his motion for new trial on the following grounds, to wit:

4. Because the court erred in overruling a certain motion for a continuance made by the defendant in open court at the call of said case. Said motion was made and overruled upon the following facts and circumstances:

At the time stated, defendant presented to the court a motion for a continuance on account of the absence of Dr. W. D. Copeland, Hugo Schloss, Victor Milton, C. M. Thompson, and E. B. Freeman, all of whom reside in Eufaula, Ala., and none of whom were present at the trial of said case, nor were they in the limits of the State of Georgia. Said motion for continuance was made in writing, and was on said day duly filed as a part of the record in said case. It shows fully the grounds and reasons for said motion, and the facts with reference thereto, when taken in connection with the following occurrence, in open court, while said motion was being considered:

Mr. Cooper moves for a continuance on account of absence of certain witnesses living in Eufaula, Alabama.

The Court. I believe the witnesses are those who live in Ala-
9 bama, and who have refused to come, on the ground that they live out of the State. The court has endorsed their subpœnas

and had them served, as far as lay within the power of the court, by mail, and they have refused to come, on the ground that they are outside of the jurisdiction of the court. You desire to make the point that, under the Constitution, having the compulsory right to secure the attendance of witness, you are deprived of the constitutional privilege, which you have under the Constitution of the United State, of having a fair, impartial, and speedy trial of the case, and are denied that right because there is no compulsory process to procure the attendance of these witnesses.

Mr. COOPER. The witnesses have declined to come on the ground they can not be compelled.

The COURT. There is no law forcing them to come, and they have been so advised by their attorneys representing them in Eufaula, Alabama. There is no objection to that is there Mr. Solicitor?

The SOLICITOR-GENERAL. No, sir; none at all.

The COURT. I understand the facts to be submitted are what I have stated, and you desire to make the point distinctly and clearly that you have a constitutional right to have the State of Georgia go out there and bring these people in.

The motion was overruled.

Mr. COOPER. At this stage of the trial I desire to submit my evidence. Your honor did most of the talking when I was making my motion for these nonresidence witnesses and I forgot to introduce my evidence
10 on that motion. I want to introduce the letters of these people in Eufaula, Ala., stating that they would swear that the man was insane.

The COURT. I understood that; that is what I said.

Mr. HODGES. I understand this motion was submitted in writing by his client and your honor refused the motion upon the demurrer to his own showing.

The COURT. That is practically true. I don't think the letters are necessary.

Mr. COOPER. I have got the letters and evidence to sustain the motion.

The COURT. The motion is sworn to.

Mr. COOPER. But the evidence would make it stronger.

The COURT. I will let you consider that those facts are established by the evidence; that the witnesses who refuse to come on the ground that they are outside of the jurisdiction of the court would testify to those facts.

Whereupon the court passed an order on said day refusing to continue said case and overruling said motion on each and every reason and ground therein set forth.

The court erred in overruling said motion upon the ground therein stated, because the prisoner had a right to have said main witnesses present in court during his trial, or to have their depositions admitted in evidence in his favor upon his trial, and it was necessary in order to afford him reasonable opportunity to secure said depositions that the case should have been continued, and it was also necessary in order to afford
11 the accused the right which he was entitled to in that regard for the State to consent for the introduction of said depositions, since there is no law in Georgia authorizing their introduction.

The overruling of said motion to continue denied to the prisoner the right to secure and introduce his testimony upon his trial and was, as

claimed in said motion, and as now claimed, a denial to him as a citizen of the United States of the equal protection of the laws with citizens of other States, who are accorded such right, and was a denial to him of his rights, privileges, and immunities under and by virtue of the 14th amendment of the Constitution of the United States.

5. Because the court erred in charging the jury as follows:

"The jury are the judges of the law and facts in this way: You take the law as given you in charge by the court, apply it to the facts as they come to you from the witness stand, from the witnesses for the State and from the witnesses for the defendant, and from the consideration of the law and the facts thus obtained reach a general verdict of guilty or not guilty that shall speak the truth of the case."

Movant's counsel contend that the jury are the judges of the law as well as the facts in a criminal case.

6. Because the court erred in charging the jury as follows:

"The contention of the State in this case is that the evidence establishes the fact beyond a reasonable doubt to be that the defendant in this case, in this county, prior to the finding of the bill of indict-
12 ment made an assault upon the deceased; that he made it with a weapon likely to produce death, and inflicted upon him numerous wounds; that the reason why the defendant inflicted those wounds upon the deceased was because of a grudge against the deceased because of the fact that the defendant had previously and on a prior day cursed the defendant, and that the defendant, actuated by malice, with the intent to revenge himself, procured a weapon, prepared it deliberately for that purpose, sought the place of business where the deceased was engaged in his work, and that while the deceased was engaged at his work and in such a position that the deceased did not even know of the presence of the defendant in the room, that the defendant assaulted the deceased with the knife with the intent to kill him; that it was done deliberately, wilfully, feloniously, and with malice aforethought, and that there were no circumstances of mitigation, justification, or excuse for that act; and the State insists that it was the act of a sane man; that the act was the act of a person of sufficient mental capacity to be held responsible for that act, and that the defendant is guilty of the crime of murder.

Movant's counsel contend that this charge was argumentative, to say the least of it.

7. Because the court erred in charging the jury as follows:

"The defendant contends that the mental condition of the defendant was such that if he committed the act of killing Mahoney, as claimed by the State, he is not criminally responsible for that act because at the time the defendant did not have sufficient reason to distinguish between
13 right and wrong in reference to the particular act claimed by the State to have been committed by him in the killing of Mahoney. The defendant further contends in the case that even if the evidence does show that he did kill Mahoney, and that at the time he did have sufficient reason to distinguish between right and wrong as to that act, that the defendant is still not guilty for the reason that in consequence of some delusion brought about by the mental disease his will was overmastered so that there was no criminal intent as to the act in question, and that the act of killing Mahoney was connected with the peculiar delusion under which the defendant was acting."

Movant's counsel contend that this was not a fair charge as to the contention of the accused before the jury. It eliminated his main defense, that he took the life of Mahoney while laboring under paranoia insanity or insanity by prosecution. It also eliminated one of the prisoner's main defenses before the jury, that he took the life of defendant, if he was sane, under the principal and high law of self defense. It also eliminated another contention of the accused in the trial of his case through his counsel, that he took the life of Mahoney under the fears of a reasonable man that his life or limb was in danger. In a word, the charge of the trial judge eliminated from the jury three defenses that prisoner's counsel set up for him.

1. At the time of the homicide he was laboring under delusional insanity caused by persecution.

2. That if he was sane he had the right to kill Mahoney under the laws of self defense, because Mahoney had threatened to take
14 his life on several occasions.

3. That he had a right to take the life of Mahoney under the fears of a reasonable man that his life had been threatened and was in danger.

8. Because the trial judge did not charge the jury the law on the doctrine of reasonable fear. Section 71 of the criminal code: "A bare fear of any of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted upon the influence of those fears and not in a spirit of revenge."

9. Because the court erred in not charging the jury the law of justifiable homicide.

10. Because the court erred in not charging the jury the following contentions made by counsel for accused before the jury in said trial.

Counsel for Minder claimed on the trial of said case before the jury that although he committed the homicide he was not guilty of any crime, because, by reason of a delusion under which he was laboring at the time of the killing he was unable to form in his mind an intent to commit a crime. Counsel for the accused claimed that he was laboring under a form of mental disease known as paranoia or delusional insanity; that a person afflicted with such mental disease has a delusion or delusions which
15 denominate but do not destroy the mental capacity, and that although the accused was sane as to other subjects on that of the delusion and its direct consequences he was an insane man. Counsel for the prisoner further contend that the delusion of this case was one known as the delusion of persecution, and that Minder, believing that he was unjustly persecuted by Mahoney, and that he was endeavoring to escape from Mahoney, and fearing his escape cut off, and that there was nothing left for him to do but to slay Mahoney, he proceeded to do so. Movant's counsel respectfully contend that if all these contentions were true and the accused acted under these delusions, he was not responsible for the killing. There was evidence in the record sufficient to sustain the theory of delusion, and the failure of the trial judge to charge these respective contentions of the prisoner to the jury was harmful and prejudicial to the accused. The trial judge nowhere in his charge explained to the jury what is meant by paranoia or delusional insanity, and the jury did not understand the defense set up in said case by counsel for the accused.

11. Because the court erred in charging the jury as follows:

"With reference to that contention as to the insanity of the defendant by his counsel, the State insists that the defendant did know that it was wrong for him to do the act which the State claims was done by him, and that the defendant is criminally responsible, for the reason that at the time he did have sufficient mental capacity to know the distinction between right and wrong with reference to that act. The State further contended in reference to that contention of the defendant as to
16 the delusional insanity that the defendant did not act under the impulse of any delusion. The State contends that he acted not under any delusion, but from malice from a state of facts which did actually exist, and that inasmuch as no delusion existed in the mind of the defendant that the defendant is guilty of the crime of murder."

Movant's counsel contend that it was a question for the jury to say whether or not the prisoner was laboring under any delusion, and not for the court. Movant's counsel further contend that this charge was error, because the issue in said trial was not whether the defendant knew the distinction between right and wrong with reference to the particular act; but even if he did know the distinction between right and wrong, yet he was laboring under a delusion at the time of the killing he could not be held responsible for his act. Movant's counsel further contend that this charge was an expression of an opinion that the prisoner on trial was not laboring under any delusion at the time of the killing.

12. Because the court erred in charging the jury as follows:

"Whether the State proves a homicide by unauthorized violence, and the evidence which the State introduces does not show the want of malice, then the burden is cast upon the defendant. He assumes the burden then to prove that he has not malice; unless the evidence of the State that proves the homicide shows that it was done without malice then the defendant assumes the burden of showing to the jury that it was done wtihout malice. In this case the defendant assumes the burden, because he says he did not have capacity enough to entertain malice. If the
17 evidence shows beyond a reasonable doubt that the defendant killed the deceased Mahoney by unlawfully cutting and stabbing him with a knife, and that it was done in this county prior to the finding of the bill of indictment, and there is not in any case anything which shows any mitigation or justification of the act, then the burden would be upon the defendant to show that he was without criminal responsibility for that act. He seeks to do that upon the interposition of a plea of insanity, and introduces evidence upon that subject under the plea of not guilty entered in the case."

Movant's counsel contend that this charge was error because it eliminated from the jury all of the defenses set up by counsel for the accused, except the plea of insanity. It eliminated the plea of self-defense. It eliminated the plea that he took the life of Mahoney under the fears of a reasonable man. It eliminated the plea that he took the life of Mahoney while laboring under delusional insanity caused by persecution. It is an intimation that the defense set up by the prisoner was not successful, because he says to the jury that "he seeks to do so and so."

13. Because the court erred in charging the jury as follows:

"On that subject I charge you then, that the law presumes every man sane until it is made to appear to the contrary that he is insane or of

unsound mind, and if a man sets up that defense under a plea of not guilty, if the evidence in the case of the State shows beyond a reasonable doubt that the homicide has been committed by him without justification or mitigation for the act, the burden would then be upon the defend-
18 ant to show his insanity to the satisfaction of the jury. He should show them to a reasonable certainty that at the time of the commission of the act he did not know the nature and quality of the act, or if he did know the nature of the act, that he did not know the act was wrong or else that he was acting under some insane delusion which destroyed his freedom of will, which prevented the operation of his will as to the result of mental disease in consequence of which his will was overmastered so that no criminal intent was formed in his mind to do the act in question, and that the act done was connected with the peculiar delusion under which the defendant was laboring. If he does that and shows it to a reasonable certainty by a preponderance of the testimony in the case, then the jury would be authorized to conclude in the case that the defendant had established his plea of insanity in the case and he would be entitled to be acquitted by the jury upon the ground of his insanity. On the other hand, if he does not establish under the rules of law the fact of his insanity by a preponderance of the testimony in the case, then the jury would not be authorized to acquit the defendant upon the ground of insanity."

Movant's counsel content that this charge was error because the defendant is not required to show to the jury to a reasonable certainty his insanity at the time of the homicide. If the jury have a certain doubt from the evidence as to the sanity of the accused they should give the prisoner the benefit of the doubt and acquit him.

14. Because the court erred in charging the jury as follows:
19 "The general rule on the subject of criminal responsibility, where the defense of insanity is set up under a plea of not guilty is that one is criminally responsible who has sufficient reason to distinguish between right and wrong as to the particular act committed by him. An exception to that rule exists in a case where it appears that the accused has sufficient reason to distinguish between right and wrong as to the particular act committed, yet his will, in consequence of some delusion brought about by mental disease, was overmastered so that there was no criminal intent as to the act in question, and where it also appears that this identical act was connected with the peculiar delusion under which the accused was laboring."

Movant's counsel contend that this is the law of insanity generally, but it eliminated from the jury the defense set up in this case by counsel for the accused that the prisoner at the time of the killing was acting under a delusion caused by persecution. Prisoner's counsel contend that they did not set up in the trial of this case the general defense of insanity, but they set up what is known in the law as paranoia, or delusional insanity, caused by persecution.

15. Because the court erred in charging the jury as follows:

"If the jury believe in the case, however, that the deceased was not killed by the defendant in the case, if the evidence does show beyond a reasonable doubt that the defendant did kill the deceased as the result of some delusion brought about by a disease of the mind, and believe
20 on the subject of insanity that the evidence in the case does not

show to a reasonable certainty that he did not have sufficient mental capacity to understand the difference between right and wrong as to the particular act of killing Mahoney, then you would not be authorized to acquit the defendant on the ground of insanity in the case."

Movant's counsel contend that this is not the law of delusional insanity in the State of Georgia. Defendant is not compelled to show to the jury to a reasonable certainty by the evidence in the case that he did not have sufficient mental capacity to understand the difference between right and wrong in order to excuse him of the guilt of the crime of murder. This was not the defense set up by the counsel in the case. Prisoner's counsel admit that he might know the difference between right and wrong, yet at the time of the killing he was laboring under this persecution, and he was not responsible for his conduct at the time of the homicide. So it can be clearly seen, from reading this quotation from the charge of the trial judge, that it eliminated from the jury the main defense set up by prisoner's counsel; that is, he took the life of Mahoney while laboring under delusional insanity. Movant's counsel further contend that they contend before the jury that the defendant killed the deceased as the result of a delusion brought about by persecution and not by a disease of the mind.

16. Because the court erred in charging the jury as follows:

"And in that connection I charge you that if he was not laboring under such delusion of an impulse that was irresistible, the result of a
21 diseased or disordered mind, which overpowers his will; if he was not laboring that way, but acted only from violent passions and resentments towards Mahoney and upon real circumstances, no delusion about it; but upon real circumstances, and was impelled by no morbid delusion, but proceeded upon the ordinary perceptions of the mind, then he would be responsible, and you would be authorized to find him guilty."

Movant's counsel contend that this charge was error for the same reasons set out in the above ground, and also in the 14th ground.

17. Because the court erred in charging the jury as follows:

"If, after a full, fair, and honest examination of the evidence, your minds are unsettled, unsatisfied, you do not know what the truth about it is, then that is what is called a reasonable doubt, and you should give him the benefit of that reasonable doubt and acquit him. If your minds are legally certain and you are satisfied from the evidence in this case that he is guilty, then you would be authorized to find him guilty of the offense of murder."

Movant's counsel contend that what is called a reasonable doubt has never been explained by any trial judge in the world; that it is a question that is left entirely to the jury in every case to say what a reasonable doubt is, and of course the trial judge in this case has no authority in law to tell the jury what is a reasonable doubt. It is a question for the jury to say what a reasonable doubt is from a consideration of all of the evidence.

18. Because the court erred in charging the jury as follows:

"If you believe in the case that the evidence shows to a reasonable
22 certainty the facts of the insanity of the defendant, under the rules of law given you in charge, and when I say reasonable certainty

I mean a reasonable certainty by a preponderance of the evidence in the case, then it would be your duty to acquit the defendant on the ground of insanity; or if the jury have, after a careful consideration of the case, a reasonable doubt of his guilt, it would be your duty to acquit the defendant."

Movant's counsel contend that this charge was error for the same reasons in the 15th ground of this motion for new trial; that it is not incumbent upon the defendant to show his insanity to a reasonable certainty.

19. Because the court erred in ruling out the following testimony of Mrs. B. M. Wilson, sworn for the defendant:

"Everybody in Dawson considered him crazy."

This testimony was objected to by the solicitor-general, and his objection was sustained, and this ruling of the court was error.

20. Because the court erred in admitting the following testimony, sworn to by S. Symon, over the objections of defendant's counsel:

"The object in that institution is to control the price of making clothes. Minder was the vice-president of that union or institution; Mahoney was a member; Ferris was a member. Minder never presided over these meetings; only one night he wanted to preside and he did not have any eyeglasses and he gave it up. This was about a week after he attempted to preside when the difficulty occurred down at Mrs. Barnett's boarding house."

Movant's counsel objected to this testimony on the ground that
23 it was immaterial.

21. Because the court erred in ruling out the following testimony of F. D. Bloodworth on motion of the solicitor-general:

"All of the people who knew Minder in Eufaula, Ala., considered him crazy."

This testimony was objected to by the solicitor-general and the objection was sustained, and the same was error.

22. Because the court erred in sustaining the objection made by the solicitor-general to the answer of the following question put to the witness, F. D. Bloodworth, by defendant's counsel:

"Now, I will ask you if he was insulted or abused or excited, would you say that he would know the difference between right and wrong?"

The solicitor-general objected to this because it was a hypothetical question and could not be put to a nonexpert witness.

Movant's counsel contend that this ruling of the court was error.

23. Because the court erred in admitting the following testimony of R. L. Barnes over the objection of defendant's counsel:

"I will ask you the same illustration I put to the other witness: Did he know it was wrong to steal? I suppose so at times."

Movant's counsel objected to this question on the ground that the prisoner is not charged with the offense of larceny. He is being tried for homicide, and the law distinctly states that he can not be asked any question except about the act itself. Counsel for the accused moved to rule out the above testimony—that it was not legal testimony.

24 24. Because the court erred in admitting the following testimony of M. R. Freeman, sworn for the State, over the objections of defendant's counsel:

Q. I will get you to state whether or not, in your official position, you ever tried any case in which he was the prosecutor?

A. I did; I had occasion to examine and hear testimony during that trial on the part of the prisoner at the bar. He (Minder) was before me. I had occasion to examine him as a witness, and his testimony impressed me to the extent that I believed what he had to say.

Q. I will get you to state, Judge Freeman, from your observation in seeing and hearing this man, whether or not, in your opinion, this man in June of last year, at the time he testified before you, when he was prosecuting Mahoney before the recorder's court, was a man of sound mind and knew the difference between right and wrong.

A. I would say he did, sir.

Movant's counsel objected to this testimony on the following grounds: Because it is not material to the issue whether or not he ever tried this man or ever heard him give evidence at another man's trial. This prisoner is arraigned for murder and being tried for his life, and defendant's counsel don't think these trifling difficulties that happened between other people or even between this man and somebody else is admissible. Counsel objected to the testimony on the ground that Judge Freeman is the court, he is the recorder of the city of Macon, and he is a witness in this case, and if Judge Freeman can give any facts to base any
25 opinion on outside of his court in the trial of the criminal case counsel for defense think it would be competent, but to get into the trial of the case a criminal trial before the judge counsel don't think it would be competent. Counsel don't think it would be fair to bind him by what he said in that case.

25. Because the court erred in admitting the following testimony of Holmes Johnson, introduced by the State over the objections of defendant's counsel:

"I was foreman of the grand jury when the case of the State v. Ferris and Herman was before that body, in which Minder was a witness. I heard him testify. I took particular notice of his testimony. He testified in a clear and accurate way.

"Q. Mr. Johnson, I will get you to state whether or not, in your opinion, from observation of that man—having seen him before the grand jury, hearing his testimony, observing his manner—I will get you to state to the court and jury whether or not, in your opinion, he was a man of sound memory and discretion—that is, a person who knew the distinction between right and wrong.

"A. I think he was."

Movant's counsel objected to this testimony on the ground that they were in the investigation of a criminal case before the grand jury of this county; that it had nothing to do with this homicide, and this witness was called upon to testify in that case before the grand jury. I don't think the testimony given by him before that honorable body is admissible in this court when this man is being tried for his life. Objected to on the further ground that he had no right to go into the evidence
26 and state what the witness stated before that body, because it is irrelevant to this issue and the object of this trial. Objected to on the further ground that the witness has not stated any facts upon which he can give an opinion. As I understand it, a nonexpert must give the facts upon which to base an opinion.

26. Because the court erred in addmitting the following testimony of

J. W. Nisbet, sworn for the State over the objections of defendant's counsel:

"I have an opinion as to the sanity or insanity of the prisoner. My opinion is only as to his sanity when he appeared before the grand jury. I noticed this witness a good deal more closely than I did any other witness. Of course, I heard about the murder, and I had never seen Mr. Minder. I observed him very closely, as I had never seen him until that day, and I have never seen him before that until this. There was nothing peculiar with his conduct. It was perfectly sane, as far as I could see, and I observed him very closely. His evidence was very clear. It was very straight. Of course, he speaks a little broken English, which required me to pay a little more careful attention to him than I would to any other witness. My opinion is based absolutely as to his sanity or insanity upon what occurred in the grand-jury room—from observation of him and from observation of him at the time. He was the prosecutor in the case of Ferris and Herman, and he struck me as being as sane as any man before the grand jury, and I think he knows the difference between right and wrong."

Movant's counsel objected to this testimony on the ground that
27 the witnesses did not state a single fact upon which he can base an opinion as to the sanity or insanity of the prisoner except the fact that he appeared before the grand jury as a witness.

27. Because the court erred in admitting the following testimony of W. B. Birch over the objections of defendant's counsel, a witness sworn for the State:

"I was solicitor-general at the December term, 1900, of the city court of Macon. I recollect the case of the State v. Ferris and of the State v. Herman. These two cases were tried some time between October and the 1st of January, the exact date I do not recollect. It was during the last session of the grand jury. I recollect the prisoner at the bar. He was a witness in one of them, or probably both. I talked with the prisoner at the bar. I never saw him until that morning. I used him as a witness. I knew he was charged with murder. I heard him testify. I had a conversation with him before I put him on the witness stand. I examined him as a witness. From the conversation and the examination of him as a witness upon the trial he made an impression upon my mind. I paid careful attention to him. From my observation of him upon the trial of the case in the city court of Macon, the cases against Ferris and Herman, I have an opinion as to his sanity. That opinion is based upon the answers and the testimony given on that trial only, and my opinion was that he was a sane man, from the questions that was asked him and the answers he gave in that particular case. I knew nothing about anything else. This criminal trial occurred in the city court of
28 Macon after the killing of Mahoney by the prisoner Minder."

Movant's counsel objected to this testimony and the conversations that occurred between the solicitor-general and the prisoner, because these conversations took place after the crime is alleged to have been committed. I object to going into that trial in the city court of Macon, the criminal trial that occurred after this homicide; that is, the killing of Mahoney, is alleged in the bill of indictment to have been committed. I object to that way of proving the prisoner's sanity.

28. Because the court erred in charging the jury the law of voluntary manslaughter. Criminal Code, section 65: "In all cases of voluntary manslaughter there must be some actual assault upon the person killing, or an attempt by the person killed to commit a serious personal injury on the person killing, or other equivalent circumstances, to justify the excitement of passion and to exclude all idea of deliberation or malice, either expressed or implied."

29. Because the court erred in not charging to the jury in said case the law of Georgia on the subject of cooling time.

Respectfully submitted.

JOHN R. COOPER,
HERMAN BRASCH,
Counsel for Prisoner.

Amendment to original motion allowed. The grounds of the original and amended motion for a new trial are all approved as true and
29 correct and ordered of file as part of the record in said case. This April 15th, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

Filed in office April 15th, 1901.

ROBT. A. NISBET, *Clerk.*

30 THE STATE *vs.* I. MINDER. } Indictment for murder.

In Bibb superior court, March 11, 1901. Before Judge Felton and a jury. Verdict of guilty.

BRIEF OF EVIDENCE HAD ON TRIAL OF SAID CASE.

Mrs. L. GRIER, sworn for the State, testified.

Direct examination by the SOLICITOR-GENERAL:

My name is Mrs. L. Grier. I am acquainted with the defendant. I was acquainted with A. J. Mahoney during his lifetime. He is dead. He died on the 22nd day of October, 1900, in Bibb County. I had known him close on to two years, I reckon. I had known Minder about the same length of time. I was employed on the 22nd day of October, 1900, at Mr. Veltre's workroom, on Cotton avenue, Bibb County. Mahoney was employed there. There was a tragedy there that day. It was a killing. Mahoney was killed. Minder killed him. Minder was not employed there at that time. I couldn't tell you the size of the room. The room had two doors. One of those doors led into the hall, and another of those doors led out of this room into another room—from the workroom into another room. When Minder came in he come in through the door which came off the hall. He came in to bring a spool of cotton basting thread. He picked it up off the street. Well, as I suppose, the spool fell out of the window a right smart bit before he passed, and Mr. Symon, a workman, attracted my attention by asking him to find that basting and pitch it up to the window, and held
31 his hands. I looked out, and I don't see very well, and I didn't see him; but when I seen him he was in a rising position. I

suppose he had picked it up and I suppose he was rising. He was in a rising position, but I didn't see him pick up the basting. Mr. Symon said, "Don't bring it up; never mind, don't bring it up;" and I said, "Don't let him throw it up; he might hit somebody. Why don't you let somebody go down for it?" They were all busy except me; so he never thought any more about it, and I don't think he ever looked up. He come on with the basting, on up the stair and into the room where the workman was. The spool of cotton fell out of the window some few minutes before. I don't know why Mr. Symon didn't call someone to go down and get it at the time it fell out. He did think about it. Such things had often fallen out of the window before, a spool of thread or a piece of work, and they were left on the ground until some would come from across the street. The spool fell off the table where I was working. I don't know where it had been sitting up to the time it fell out of the window. I wasn't looking and didn't see the spool of basting fall out of the window. I didn't see it on the ground; I saw it after he brought it up. It rolled out of the window. He raised the window on account of the warmth in the room, and I suppose it fell out then. I did not see it until after he brought it up.

I did't see Minder until he was in a rising position—I suppose when he picked up the spool of cotton. When Symon called him he didn't make any reply that I heard. When he came up he had his right hand in his pocket and the basting in his left hard. I was sitting on
32 the table idle. That wasn't the place where I usually sat, and I wasn't doing anything. I was sitting there leisurely on the table by Mr. Symon. He was pressing a coat; I was doing nothing at all. When Minder came up he had his hand in his pocket and the spool of basting in his left hand. I was sitting by Mr. Symon, the gentleman I work for, and, thinking he might want to talk, I got up and went back to the end of the table. I didn't turn around at all; just moved back. He put the basting down, and Mr. Symon never even looked around at him. He was pressing with a very hot iron, and he never looked around, and there was not a word except Mr. Symon told him, "You needn't mind to have come up; you might have pitched it up to the window." Minder never made any reply to anything. He put the spool of cotton basting down and walked directly across from Mr. Symon's table and went to Mr. Mahoney's chair, and he pulled his hand out of his pocket and drew it up that way, and when he threw it up that away I saw the blade flash, and when I saw it flash I was so frightened as to be speechless, and I threw my hands up to my head that way. I stood looking at him until he made three licks, and when I saw so much blood I tell you I was unconscious, and I don't know what passed. I fell up against the window, and everybody tells me I was screaming myself to death. I was unconscious five or six or seven minutes. I don't think it was longer than that. Mahoney was sitting at his machine; I think he was sitting with his feet under the table. I knowed he was sitting humped over the machine. Either he was fixing some part of the machine or he
33 was fixing his work in—one of the two. He was fixing something at the foot of the machine. He was doing something of that kind. Of course I never paid but little attention. I haven't the least idea in the world that he knew who killed him. Mahoney was sitting with his

back not directly to the door. I can't tell you how wide the room is; it is a peculiar shape—kind of a triangle. At the widest end I suppose it would be about as wide as from here to that wall; as it runs back the other way it grows narrower. I don't know the exact length of the room; as near as I can guess, I think it is a little further than from the end of the jury box to the wall. The widest part I think is a little bit wider than from me to the wall. The door through which Minder entered was just a little further than the end of the jury box [indicating 4 or 5 feet out from the jury box and some distance from the end]. The jury box represents the work table; bend it around where that gentleman is there with his hat, right back of that chair. It is narrower at one end; it is in the same shape as Triangular Block, and you know this end is smaller. The door through which Minder entered was about here [indicating]. Mr. Simon was right about where this gentleman sits—the one with glasses on—the second one. I sit around in the corner, just like that corner there, with a window in the corner. We both work at the table; it is a couple of tables put together that make the whole table that extends along the length of the wall. My place for working is in the corner right at the end of the table. When Minder came in the door I was sitting right on this table; it is a good wide
34 table, and I was sitting right here. Mahoney was sitting with his back not directly to the door; of course it was to the door, but it wasn't right straight to it. He was sitting farther over this way from the door, you understand. When Minder came in through the door he passed Mahoney about as near as that row of chairs. I couldn't tell how many feet. Of course I never measured it, and I never thought much about it. He come up there to where you stand, and then turned to the right over there. From where Mahoney was sitting and the position in which he was sitting he could not have seen anybody enter the door unless he looked around, and I never saw him look around at all. When Minder came in he passed within a few feet of where Mahoney was sitting, and went directly over to where Symon was and put down the spool of cotton, and walked right over to where Mahoney was. Mahoney did not look up. I don't have any idea he knew who killed him. I don't know how many times he cut him. I heard later on it was nine times. Of course I don't know. I saw three stabs, and I saw him do this way [putting her hands to the back of her neck], and a little later I saw him do this. It was the most fearful sight I ever saw in my life, there was so much blood. It just so frightened me that I was unconscious for several minutes. He never uttered a word, with the exception, when I came to myself and realized myself and realized what had happened and run, he said, "For God's sake, get me a doctor; I am dying." And then after that, before he died, I heard him ask the Lord to have
35 mercy on his soul. If Minder ever uttered a word from the time he came in the building until he was arrested, no one knows it. I never heard it. I lost sight of Mahoney when he throwed his hands back here. The sight of the blood made me unconscious, and when I next saw him he was sitting on the table. Everything passed from my memory, and I don't know whether he got up or was helped up. When I next saw him he was in a sitting position upon the table, and he begged them to get him a doctor—when I realized where I was at. He begged

me to run and get him a doctor for God's sake, and they say I met a man in the hall and he run up and said, "Mrs. Grier, what is the matter?" and I said, "Minder has cut Mr. Mahoney;" and I said, "He wants a doctor," and as quick as I said that he was out of the door to get one. Mahoney walked as a cripple, but I never did know what was the matter with him, whether bad feet or corns or something like that.

Those that worked in the shop were Mr. Symon, Mr. Benny, Mr. Mahoney, Miss Langston, Miss Herndon, and Mr. Murphy, but he wasn't in the room; he had been to dinner, and I could not say where he was at that time. They said he was in the adjoining room, taking a nap. I don't know. I noticed the way Mr. Mahoney seated himself or got up from the machine. It seemed like he taken a long time in getting up; he couldn't do it quick. He would raise himself like he was stiff in his feet or knees, or something like that.

36 Miss MAMIE HERNDON, introduced by the State, testified:

In October a portion of the month I was working for Mr. Veltre, 151 Cotton avenue. Mr. Mahoney was employed there. Minder, the defendant, was not. I know both those men. I was there at the time of the killing. On that day, the 22nd of the month—I think it was the 22nd of the month—we went to work, and we went to dinner and Mr. Mahoney went to his dinner, and when he came back he was just sitting ready to go to work and sit down to his machine, and something was said about a spool of basting cotton falling out of the window. I don't to know who it was, and in a few minutes Mr. Symon called to some one toss up the basting cotton, and he said, "You needn't come up; just throw it up." Some one came in the door and I looked up and it was Mr. Minder, and he walked to Mr. Symon and Mr. Symon said, "You needn't have troubled to brought it up," and he turned like he was going out of the room, and he just got opposite Mr. Mahoney, who was sitting by the machine, but he hadn't started to work, and he had his hand in his pocket, and he jumped at him and jerked out a knife and stabbed him in the side of the face and neck. At first I didn't know what was the matter and I jumped up and caught him by the arm, and I said, "Somebody come here and help me; he is killing Mr. Mahoney;" and Mrs. Grier said, "Let's scream," and we all began to scream, and Mr. Minder turned to go. Mr. Minder ran out of the door. I ran out of the door and asked everybody I met to get a doctor, and I ran a few steps and some one caught me by the arm and carried me back upstairs, and I don't know anything that happened then. In going from

37 the door to where Minder entered to the place where he put that spool of cotton he would pass right behind Mahoney, about two or three feet, I think; that would be the direst route between the entrance and where he placed the spool of cotton. He passed on the right side of Mr. Mahoney; I was right at the same table. I worked for Mr. Mahoney; I was basting and he was sitting at the machine fixing to stitch. At the time Minder came in I was sitting at the table and he was sitting around the corner. I could reach out from where I was sitting and touch him; I was within about two feet; he was sitting just across the end of the table there. When he was sitting at the machine the door was at his back, about sideways. He was sitting

with his back to the street or sidewalk here [indicating], and Mr. Minder came in here [indicating]. In the position he could not see anyone come in the door without turning his head. I don't think he turned his head. After Minder put down the spool of cotton on the table where Mr. Symon was at work he turned as if he was walking out. When Minder came in the door he did not have anything in his hand. He had his hand in his coat pocket. His knife was in that pocket. I don't remember him saying anything. If he did I don't remember it. If he did it was after he cut him. I did not see any knife in his hand when he started out. I had turned my back. I never saw the knife until he stabbed him. Mahoney was sitting in his chair by the machine.
38 He got up after he was stabbed. I saw him, and he was standing by the table and Mr. Symon was holding him by the arm, supporting Mahoney by the arm. He said, "Some one go for the doctor; I am dying." I know where he was stabbed—on the face and right here [indicating the back of his neck]. I don't know how many times he was stabbed. He was cut right back of his neck. I remember seeing him stab him three times in the back. At the time Minder was stabbing Mahoney in the back he leaned further over in his chair. He never got up until the stabbing was over. Mahoney was a cripple man; he always got up and down slowly. I don't know what kind of knife that was. I never saw the knife so close; I think it was a big knife. That is the knife I saw on the last trial. It was some thing like that; I couldn't tell.

Cross-examination by Mr. COOPER.

I could tell he limped, and then he told me several times how he was crippled. I was not engaged to be married to him.

Miss OLA LANGSTON, introduced by the State, testified:

On the 22nd day of October last year I was employed in the tailor shop of Mr. Frank Veltre, Cotton avenue. That was the place where Minder killed Mahoney. I worked in that shop near the door where Minder entered. Mahoney worked at that shop; he was sitting at his machine with his back to the door. In that position he could not see anyone enter the door without turning around. I was standing right at the door drinking water when Minder came in and placed the spool
39 of cotton on the table and went over to Mr. Mahoney. In going to where he placed the spool of cotton he would pass Mahoney as near as from here to the table. I don't remember him having anything but the spool of cotton. I don't remember whether he had his hand in his pocket or not. When he put the spool of cotton down he walked directly over to Mr. Mahoney. I didn't hear Minder say anything. Mahoney did not say anything. Minder just commenced stabbing him with a knife. Mahoney was sewing at the time. He was bending over the machine. I don't know where Minder first cut him. I don't know where the first cut was made on his person. Mahoney never got of his chair. He did not say anything until he was taken out of the chair, and then he said, "Lord, have mercy." He never said anything while he was being cut. Doctor Ross came; I suppose it was ten or fifteen minutes after the cutting. At the time Dr. Ross came I believe they had moved him out of the room and put him in the next room on a bed. The doctor got there before the priest. He was not dead when the

priest got there. I don't know whether he was unconscious. He died the same day. I was not there when he died.

Cross-examination by Mr. COOPER.

I was put on the stand and testified when this case was tried before. At the time of this fatal occur'ence Mrs. Grier, Miss Herndon, and myself, Mr. Benney and Mr. Symon and Mr. Mahoney. Mr. Benney was working down by the door and Mr. Symon was in the other corner, by a table like that. I was standing by the door Minder came in, drinking water. He came in by me, very fast, and looking very pale. The
40 dressmaker was in the next room; the room we have for pressing; there was a colored man. Mahoney never spoke to Minder. The killing was just as quick as he could walk in and put the spool of cotton down and walk back to Mr. Mahoney. It was about ten feet from where he walked over to Symon, to give him the spool of cotton, to Mahoney. Mahoney was sitting at the machine with his work in front of him. I heard Mr. Symon say something to Minder. He said, "You needn't have brought the basting up; you could have thrown it up." I did not see a man running across the street. I don't know whether Minder picked it up at all or not. I did not see that at all. It is true that he came in with the spool of cotton. I don't know whether he had a knife or not. Miss Herndon had her face turned toward him, bending over her work. Mrs. Grier was over near Mr. Symon.

C. E. RANDALL, introduced by the State:

On the 22nd day of October last year I was a city fireman. I was on a Belt Line car going toward the City Hall. I was sitting on the front seat on an open car, I think. I saw the defendant, Minder, come out of a stairway on the side walk. That is the entrance to the work shop those witnesses have testified about. When I first saw him he was coming out of the entrance upstairs, walking rapidly. What attracted my attention was the speed he was walking and his countenance, and the hollering upstairs. There were several ladies upstairs hollering for help. I arrested him because I thought he had done something. The
41 rate of speed at which he came out of there and the expression on his face looked like he had done something. He tried to pull away two or three times and said he hadn't done anything. He started toward the City Hall. I did not see any weapon with him. I started to bring him back to the steps where he came out and walked a few steps with him that way, when I decided I had better carry him towards the City Hall, and I turned and walked the other way and turned him over to an officer, Mr. Moseley. I thought it best to carry him to the City Hall. I did not know at that time any crime had been committed; I first learned it when he told the policeman he had nearly killed a man. That was all that he told him. He did not state where the occurrence had taken place.

Cross-examination by Mr. COOPER:

I don't mean that Minder was running; he was walking pretty fast.

Redirect by SOLICITOR-GENERAL:

He was walking faster than men generally walk.

H. C. BILLINGS, sworn for the State, testified:

On the 22nd day of October last year my place of business was #159 Cotton avenue. It is the adjoining building to the work room of Frank Veltre. My office was down stairs. I remember the day when Mahoney was killed. I went to the room that day. I heard some ladies screaming. I was writing, and I immediately got up from my desk and went out on the sidewalk. I saw there was a commotion up in this
42 building. I saw the street car had stopped and the passengers seemed to be looking up in that building. I could hear the ladies screaming, and just at that time a gentleman came down the stairs. He was coming out of the door, I suppose four or five feet from me, and he passed me, and a man on the street car hollowed to arrest that man, to catch that man, and I started to do so, and I saw that a gentleman had gotton off the street car and was heading him off, so I went on up stairs. This man coming out of the door was the prisoner, Minder. I went on up stairs then and when I got to the top of the steps I saw a lady in a fainting condition. I didn't know who the lady was, but there was another lady and gentleman trying to get her into one of the rooms. She was very pale and very much excited, and as soon as I could get past I went into this room where the disturbance was. Just as I entered the room three or four men had hold of Mahoney helping him as gently as they could and carrying him out of this room and into another room. Just as they passed I glanced at Mahoney's face and it looked very bloody. I saw that knife in the room; it was lying right on the end of the table. I don't suppose it was more than twelve or fourteen inches from the machine—right on the table. The knife was bloody at the time. Some of the blood was on the table and some on the sewing machine. I never noticed whether there was any on the floor. I am satisfied that is the knife. I think Mahoney died between thirty and forty minutes after the occurrence.

43 J. T. Ross, introduced by the State, testified:

I am a practicing physician. I have seen Mahoney during his lifetime. I didn't know what his name was. I remember the circumstances of his death. I was called to see him, and I found a great deal of blood around the house. I was telephoned for at my office on Cherry street, over Clem Phillips'. It was only a few minutes before I got there and found Mahoney on a bed; it seemed to be a bed room. He was in a moribund condition—a dying condition; stab wounds was the cause. I think there were eleven stabs and cuts combined. One cut across these two knuckles where the finger' join the hand—the two knuckles in front of them. A cut across the two knuckles where they join the hand on the left side. A stab in the right arm about there—a stab wound. There was a cut on the back of his neck, and one a little more than skin deep cut on the right side of the head just there; a cut four or five inches long, and five stab wounds in the back. I think the stab wound in his back caused his death. Either one of the four wounds would have produced death; possibly the fifth wound, but I don't think hardly that would have produced death. He was probably most on a level or the man was bending over. The stabs were most straight in so far as the back was concerned. The stabs on his hands depends on where

his hands were. The stabs may have *have* been inflicted on his hands as he threw up his hands, or he may have been in that position. [Bending the elbows with the hands in front.]

I think those wounds could have been inflicted with that knife. I think I recognize the knife as the knife that was showed to me at the time as having been used—at the time I went to see him. He
44 was unconscious when I got there. I got there before the priest. I don't know the priest's name.

OSBORNE CHAMBERS, introduced by the State:

I know the defendant, Minder, when I see him. I sold him a knife. I don't remember the exact time. I remember the day A. J. Mahoney was killed. It was the same day I sold Minder the knife. That is the knife. I first saw him that day early in the morning, about seven or quarter past. I open up at half past six in the morning, and he came in before I went back to breakfast and said he would be back about eleven. He looked over the knives I had in the case and asked me if I had a larger knife; and I told him no, and when he came back he selected this one. He just said he wanted a large knife and one that would open easily and selected this one. It was about eleven o'clock when I next saw him, at Ethridge and Baker's store. I was at the front of the store, and he came in, and of course I recognized him, and went around and showed him several that I had shown him early in the morning. That time he asked me if I had a larger knife than the one I have, and I told him no, and he just put a dollar down on the case and walked out with this one. That was about eleven o'clock, and about two or half past two I heard that he had killed Mahoney.

The knife was tendered and admitted in evidence.

The State closed.

45 J. SAMUELS, introduced for the defense, testified.

Direct examination by Mr. COOPER:

I know the prisoner at the bar, and knew Mr. Andy Mahoney. I am a tailor. My place of business is in Park Hotel Block. I saw the defendant on the day of the killing. He came in the store; it was a little after nine o'clock, and I asked him what made him so late. He come in there excited and nervous, and said he didn't even sleep the whole night; that is the reason made him so late. I asked Minder what caused him to come in there so late to work, and he said Mahoney had cursed and abused him yesterday morning. I asked him if he had said anything, and he said no, he have not said anything, and he had cursed him for a God dam' son of a bitch, and he said he have cursed him again. I said, "Minder, you had better go over and get to work, because we are very busy." I gave him a piece of work and he started to work, and about an hour or an hour and a half after I stepped in the work room, and I seen he had done the work, and I had to do it over. The work was ruined, and I said, "Minder, you had better leave the work and go over to Mr. Cherry's drug store and get some medicine to stop that nervousness," and he said, "Will you give me my money what was coming to me? and I am going to leave." There was eight dollars coming to him, and that was the last time I seen him. He left my place

about eleven o'clock. I believe he was excited. He did not know what he was doing that morning. He had ruined a coat; he had half done his work and I had to do it over again. He had been working
46 for me five weeks. From what I have seen of him in my place of business, from his talk, and from his acts there, from what he had done in my presence I would consider him a man of unsound mind at the time of this awful tragedy.

Cross-examination:

He had been working for me five weeks. I presume I had known him about two years; he had lived in Macon that long. He had been working for McKay's all that time; he only worked for me five weeks. I heard him say he was a married man. I don't think he had any children. They have got a tailor's union. I do not belong to it. I can't. Of course my tailors belong to it, and Minder belongs to it. I have never heard whether he was vice-president. It is not my business to know. They keep a secret society to themselves. I believe Minder is a Jew. He don't make anything but coats. He had made me eight or nine; he is a pretty fair workman. I had some trouble to get him to work and with his work. I never had trouble with all my men. Some days he don't work. He was not my principal coatmaker; I was myself. I have got another down there. He had been working for me four or five weeks. I had to undo his work several times. Sometimes he did it all right and sometimes he didn't; he was in my shop at that time. He seemed excited, nervous; something like that those days. I couldn't run him off; I didn't have anybody else to work for me. I don't know whether he was a drinking man. I never saw him take a drink. I didn't go near enough to smell it. I never told him to go off that
47 morning and get a drink; I told him to go to Dr. Cherry's and get some medicine. I couldn't tell that the times he was nervous he was on a spree. I suppose he would get nervous without any cause. That's all I can tell. He would get nervous and excited between ten and eleven o'clock. I don't know that that is the time when most drinking men want a drink most. He had been working for me five weeks. I told him when I put him in my employment I didn't allow any drinking in my place; I only told him once. I told him like I did the rest of the tailors when they started to work. Tailors as a rule are drinking men. These attacks of nervousness generally came on about ten or eleven in the daytime. I never knew he had an attack in the evening. I couldn't tell you any more about it, in the short time he was working for me. When he had these attacks he would shake and talk foolishness. He said lots of things I don't like. I can't recollect what he said that was foolish.

This particular day he got there about nine o'clock. His usual hour for reporting was half past six or seven. He left there about eleven. I gave him a coat to work on that morning, and he was so nervous he couldn't work. He started to work and done an hour and a half work on it. I walked in the shop and told him to leave because I couldn't use his work. I don't know that his failure to do that work was on account of his nervousness. He was working with his fingers and he did not half do it. He was sewing a coat. He said his excitement was

due to the fact that Mahoney cursed him the day before. He said the cursing took place in Mr. Veltre's shop.

48 I paid Minder on Saturday night. He worked by piece work, and I presume he made $21 or $22 during that week. He generally made $16 or $17 a week; he had a helper that week and he made a little more. He had been working five weeks and I had paid him every Saturday night; gave him all of his money. Minder was a hard worker. What he done with his money I don't know. He left eight dollars with me that night, and called for it on that Monday morning. I had kept money for him before. I don't know whether he saved his money or not. I simply kept back eight dollars because he wanted to get some clothes next week, and I kept that money to buy a piece of goods for him.

Redirect examination by Mr. COOPER:

From what I saw of him that morning, his nervous condition, I would not be willing to say that he knew the difference between right and wrong.

Recross-examination:

I saw him the last time about eleven o'clock. He came there that morning and worked a little over an hour and a half and then I told him to leave; it wasn't eleven o'clock then. I don't know what time this killing took place. He was nervous and excited; I don't know what was the cause; that is the only reason that I can give for his spoiling my coat.

Mrs. B. M. WILSON, introduced by the defense, testified:

I was acquainted with I. Minder when he lived in Dawson. I keep a hotel there. I don't remember the precise time when I first saw Minder; it has been four or five, or possibly six, years ago. He lived

49 there something over a period of three or four years, I should think. He boarded at my house a good deal of the time. I noticed a great many times things that he done was foolish. I don't recollect any special instance, except that he was always very excitable, easy to get torn all to pieces, drank a great deal, and seemed to be perfectly irresponsible when he was drinking, and tried to commit suicide several times. I don't remember how he went off; he tried to drown himself several miles from home. I think he had been missing a day and night, and his friends were searching for him. He staid off, and they found him at the mill pond. He took morphine—I know that; I saw the doctors working with him. They said he had taken morphine, and he said that was what he was up to—that he meant to kill himself. He was extremely nervous when I knew him and very excitable. I don't feel that I could answer whether he had any sense when he was excited. He was rather the protege of other people, and I came in contact with the other people who kept him there—who he was working for rather than him.

Some of the time he was a single man and the other he was married, but he separated from his wife. I never knew the circumstances. He was single when he boarded with me. I think possibly he was living away from Dawson when the actual marriage occurred, but he came back there to live. I don't know how long he lived with his wife. I don't know whether I could state intelligently whether the prisoner is a man

of weak mind, but so far as I think of him, he is decidedly so. I never considered him anything else. I always considered him an unbal-
50 anced man, generally speaking, at a distance. I never thought much about it until I was sent for to come up here. I think I said I was always afraid to have him around when he was drinking. I had little children around the house. He was very fond of them and wanted to play with them, but when he was drinking I was afraid for them to be around him. He was very excitable and quick-tempered.

Cross-examination:

I live in Dawson. I don't know how long it has been since Minder lived in Dawson. I have not kept track of him at all, but it seems that it must have been three years since I have seen him at all. He went from my house and lived in Eufaula, and my recollection is that he came back and lived at my house a little while. To the best of my recollection that is the last time I have seen him; I have no idea that I have seen him since, but I have been very busy and don't remember just when it was. He was a tailor; part of the time he was working for two Jewish merchants who were staying in my house to board. He was in the tailor business, then the very best in town. He was the only tailor there. He made men's clothing. I think he gave satisfaction. The trouble was he would so often get drunk, and wouldn't finish his jobs. I don't think I know a single person who went to him for work. I just know he did good work when he was sober. I never studied the man close enough to answer whether he had sense enough to tell right from wrong. I noticed him very little, bit it never struck me that he was as bright he ought to be. The periods of excitability were not the
51 result of sprees, if he was the least bit worried, and he was always laboring under the impression that he was imposed on, and he was imposed on in a business way in our town, and it kept him unsettled nearly all the time and he was worried about it. I imagine he would not have felt it so keenly if he had not been weak-minded. I don't know of anything wrong that he ever did except these attempts at suicide. I know very little of him. He never interfered with me, but he did a great many inconsistent things around there. I don't remember distinctly of him attempting any violence; it seems to me that I heard of it, but I don't know enough to say anything.

I couldn't tell you when that attempt at suicide was; it was about a mile and a half or two miles from Dawson. I knew nothing until they brought him to my house after he tried to drown himself. I don't know when he disappeared from home. I heard that Minder had disappeared, and it was supposed that he had tried to do himself violence, and finally his friends brought him in. I didn't see him that night until the next morning. I never talked very much with him while he was in the house.

I didn't know who he married, more than that she belonged around our town. He didn't marry her in Dawson. I think he married her in Eufaula. I think she was raised in an orphan's home and he met her at her boarding house. He always imagined that he was ill-treated at my house, and would go and come back and go and come back. He did that often. He never lived in my house with his wife. I think he

married her in Eufaula and came back to Dawson. I think she
52 was in town with relatives. I am almost sure she was. I presume the separation had something to do with his nervousness. I know nothing of that.

He was not at my house, but was up town. He had been around the house for four or five days, as was often the case, and I would not see him for a week. I have seen him appear industrious, like he was sober, for a long time, without appearing to be drinking around the house. I don't know whether he was drinking periodically; he may have been drinking steadily all the time for all I know. When he tried to kill himself with morphine—I think that took place at the shop—I was up the street. He was brought to my house; by whom I don't know, probably two Jewish merchants. One of them is now in Europe. Aleska & Tobin was their firm name. I don't know what physician attended him. He was carried up to his room, and I just sent his meals up to his room. He was there for days and didn't eat anything. I knew that he had some to wait on him and it wasn't necessary that I should go up. I had plenty of servants, and then his friends looked after him. I think he suffered from this illness four or five days. I never had any talk with him; I never came to be that close. I had him to do work for me, but he didn't like me at all. I had a positive way of speaking around the house if he was too noisy, too excitable, or too fractious. He never came close enough to be disagreeable. It wasn't made unpleasant
to have him around the house when he was drinking; he wasn't
53 that noisy. I never would have permitted that. I never discussed with him anything about his drinking. I may have told him that he ought to try to quit drinking, something like that, in a general way.

I had trouble with him about one board bill and had him arrested as the outcome of the matter. I think it was when he quit my house; but he came back. Really, the man quit my house and come back so many times that I could not tell you. These Jewish merchants were always making him come back where they could have their eyes on him. He worked up their material and they preferred to have him in the house where they could keep their eyes on him at nights. It really suited him better to be somewhere else than at my house. He was thrown with people at other places who were more in his social strata. There was nobody congenial at my house. He didn't find these people congenial at all. I don't know anything about the man's real level.

I offered to settle with him about his board bill, but he insisted on paying it. I would not have troubled him at all about the amount, but I resented his acting on the advice of some people who did not like me and I did not like them. He was not acting in the matter himself. I saw they were advising him and I just would not let him quit owing me under the circumstances. After I had won the case I told Mr. Minder, who had money on deposit. The parties who had it on deposit told him not to pay me, and the amount was so insignificant that I really would not have troubled him. After he was given to understand that he could
be made to pay I felt sorry for him. He had to pay the expenses
54 of the suit I had brought—I don't remember just what proceedings I had brought—and I told him I would not make him

pay it at all, but he insisted on paying it. He simply shook his head and said no. That is all he said. I think by the time the trial was over he was so thoroughly provoked and he wanted to displease those friends who wanted to keep me from getting it. I think by the time he got mad with his friends. He was always trying to get even with somebody. He did pay it, but I don't think he would have done it if left alone. I think he would have gone right out of town. I don't know anything about the circumstances of this morphine business.

Redirect examination:

He never bothered anybody in my house. He always understood that he had to be quiet. I heard he had a fuss, and I saw him come in bloody when he had a fight up town. I never knew anything about that. I had some business engagement with him. I had a time to get him to finish up a piece of work for me. He used to come home and declare that he was going to do it, but I couldn't get him to finish it to save my life. He would forget it, and got right off. It was always hard to get him down to my work. He was always owing me money, and wanted to work for some one else. I used to think he didn't want to work for me because he owed me money. I used to accuse him of that. I don't know that I ever stopped to analyze it.

Recross examination:

I do not know anything about this man's religion, but that he
55 joined the Christian Church in Dawson. I don't think he ever attended the church.

In rebuttal, by Mr. COOPER:

He was a Methodist.

S. SYMON, introduced by the defense, testified:

I know the prisoner at the bar. I have known him for about twelve years. He came from New York, and before that he came from Austria. He had been in this country, as long as I know, twelve years. I have known him in Macon, Ga., twelve years. He worked with me. He boarded at the same house with me, but never slept with me. I was present at the killing of Mahoney. I was standing up, pressing. I did not see Minder come in that day. I saw him on the street, running. I guess it was between one and two o'clock. I did not see him have anything in his hands. I spoke to him through the window and told him to pitch up a spool of thread; but he brought it up. I couldn't state whether or not he was excited. I didn't see his face. He worked with me. I know that he said lots of things that was foolishness. He said different things. I know one Sunday morning, while all the folks were passing from church, he carried a glass of milk for the cat right through Mulberry street. I know a sound man would not do that. He had a cat at the shop He did foolish things in the shop; and from his talk and his actions and what I saw of him, I would consider him a man of weak mind. He had some trouble
56 with Mahoney. It was in the month of June. Mr. Mahoney came home to supper, and while we were all at supper in the dining room he took off his coat and hat, and after it he used some

very vulgar and severe language. He called Minder a dam' son of a bitch bastard vice-president. He cursed him again on Sunday, the day before the killing. I guess it was between twelve and eleven o'clock. We were all sitting at work. I had a special job; we had a special job, some work for Chief Boiffeuillet, to finish up, for he was going off on Monday morning, and Minder came up and talked to all of us, and while he was sitting talking to all of us Mahoney spoke and cursed him and said, "I wish you stop, God dam' son of a bitch bastard," and another fellow got up and asked him, "Who you mean?" He never answered, and Minder got up and begged him to tell him if he meant him, and if he did he would take his part. He never answered and Minder went on home. We thought it was meant for Minder. I don't know of any other time his cursing him. Mahoney had been telling us that he had some trouble; that there was some trouble eight or nine years ago in Atlanta. I don't know of any other trouble they had in Macon.

Cross-examination:

Minder is a Jew, born in Austria. I guess Mahoney was an Irishman. I do not know whether he was born in this country.

I first knew Mahoney about two years ago. I have known Minder about twelve years ago. I first saw him in Macon. I don't know how long he had been out of Austria. He had been working as a tailor
57 in New York, and came here and worked for Shea six months, and went home from here to Atlanta, and worked there. I couldn't tell you who he worked for. I could not tell you how long he staid in Atlanta or where he went from Atlanta. He came back to Macon in 1891; I do not know where he was or what he was doing during the time he left here and come back. Since 1891 he has been here several times. He had been a tailor all that time; been known as a journeyman tailor. He came back to Macon the last time last September a year ago, and worked for McKay. The last time he worked for Jake Samuels. He worked about a year the last time at McKay's; he made coats; that was his special business. He did medium work.

There is a tailors' union in this town. Minder was vice-president. The object of that institution is to control the prices for making clothes. Klatt was president. Mahoney was a member. Ferris was a member. Minder never presided over those meetings. Only on' night. He wants to preside, but he did not have any glasses and he gave it up. The night he attempted to preside was not the night the difficulty occurred down at the boarding house. I guess it was a week or so afterwards. I am not positive that the difficulty down at Mrs. Barnett's boarding was a week after the trouble in the union. I am positive it was not the same night. I do not remember whether it was the night after or not.

They had the trial at the recorder's court after the trouble at Mrs. Abrams; it was about Mahoney cursing Minder at the boarding house. There wasn't two trial at the recorder's court. Ferris and Abrams case was in regard to what transpired at the labor union. That was
58 a different case altogether. This difficulty at Mrs. Barnett's grew out of the trouble at the union. Minder was at supper when Mahoney came in. The old lady, the mistress—Mrs. Barnett—was present. When Mahoney came in he said to Minder, "You God dam' bastard vice-president." He was referring to the vice-president of the labor

union. Mahoney lived there then, and had the same room with me. Minder lived in the same boarding house. He roomed with Golden and Benny. That's all that I know. Minder did not make any reply. The next day he reported this trouble to a policeman. He had Mahoney arrested and carried before the recorder's court and tried. This difficulty took place in the boarding house in June of last year, about seven o'clock in the evening. They didn't have any difficulties until on Sunday before the killing. When the trouble took place in the workroom, Mr. Veltre, Benny, Golden, Lewis, and myself and Mahoney were present. Minder came to the shop about eleven o'clock. I was there when he come. He came of his own motion, I guess. When he came in he began to talk. He did not talk about the affairs of the labor union or the pay of the journeyman tailor. He was just talking about different business matters. I remember he was talking about tailoring—about what he was going to make the next week. He was piled with work and all such talk. He was talking to everybody generally. Everybody was talking—just a general confabulation. There was nobody talking Hebrew at all. We Hebrews don't generally talk Hebrew when we are together. We did not use it at all on that occasion. We were not talking German; we were talking English. Mr. Veltre was English, and Mahoney. The lan-
59 guage Mahoney used was "God dam' son of a bitch bastard" or "bastards." He did not use the word "Shut up there." "God dam' son of a bitch bastard" was all he said. I am certain he did not use the word "vice-president." He was sewing at the time. I don't remember whether he was sewing on the machine or not. I was sitting in the same place I was on Monday, just a small distance from where Mahoney works. When Mahoney used this expression he kept on sewing and Minder run off, and before he left he told him if he meant him he would take his part. I don't know what he meant by saying that. Mahoney did not make any reply. Minder did not stay but a few minutes before he left. He did not do anything during that time. He did not talk. He got up from his chair and walked a little in the room and said if he meant him he would walk off. I don't know where he went. I did not see him at dinner. I did not go to dinner. Minder went to dinner and Mahoney went to dinner. He was boarding at the same place. I did not see Minder during the afternoon. Mahoney came back to the workshop and worked with me until about seven o'clock, and then me and Mahoney went to supper. Minder was not there. Mahoney and myself slept together that night. I guess Minder stayed there that night. I didn't see him at the house, but I saw him at Mr. Samuels' and talked to him. That was down at Jake Samuels' house, where he lives. Some more of the boys was there—Benny and Mr. Joe Golden. He keeps a barroom for himself down on the corner of Fifth and Mulberry. There was nobody else there but Samuels, Benny and Golden, and Mrs. Samuels. It was
60 no occasion at all. We generally went there Sunday nights. We did not have a drink or anything to drink. We never staid there longer than an hour. We talked about business—tailoring, and other affairs. We never mentioned Mahoney, and Minder didn't mention his name. When we left Minder went one way and I another. I think he went to his boarding house. I didn't go home with Minder that night. He did not say anything when he left. He did not have anything to say

at all about going to the boarding house. I saw him the next morning. I got an early breakfast, and he was not down then. I saw him about six o'clock; he was going up town. He said he was going to work. At that time Mahoney was in his room; he was dressing himself for something when I left. Minder got away before he got out. The next time I saw Minder I saw sitting in the shop, and Minder came up early in the morning, and he came in, and in a little while I took a coal scuttle and went into the other room after some coal, and when I came back he was gone. That was about half-past six or seven. Mahoney hadn't got there at that time. When Minder came in the room he said "Good morning," and said he was going to work, and I left him to go to the other room and build the fire, and when I come back Minder was gone. I don't know that he said "Good morning" at the boarding house. The shop was open. I opened it. Minder told me he was going to work, and then I got to my shop first, and he came in and said "Good morning." He was in the street a little while. I don't know what he was doing. I couldn't tell you that he was drinking; I couldn't tell
61 that he looked like he was drinking. I know he was always drinking. I couldn't tell you about that particular morning. He didn't look to me that morning like he was drinking. I did not notice whether he was wrought up and excited. He did not talk about Mahoney cursing him that morning. I don't know whether he had been talking about it the night before or not. It is true that after they had these words in my shop on Sunday morning I never heard him say anything about Mahoney calling him a son of a bitch, in the morning, at supper that night, at Samuels' house that night, and the next morning at the boarding house, or at the shop.

The next time I saw Minder after he left my shop on Monday morning I saw him running through the street between one and two o'clock. When I saw him through the window he was very near the sidewalk on Cotton avenue, toward the shop. I don't remember a car passing then. It might be true that there was a car about to pass at that time. I saw him in the middle of Cotton avenue; that was the first time I saw him.

The spool of cotton fell down by itself. Nobody turned it over. I was pressing a garment, and it slipped down by itself and rolled out of the window. I don't know the exact measurement of the table; it is a little over three feet. The table is by the window; it is a little higher than the window sill. The spool of cotton was sitting on the table. I put the window up that morning—I don't remember the time; it was open a good while. It was very hot; I was pressing in there. The stove was near by where Mr. Mahoney was sitting, and it was
62 very hot. I started my pressing early in the morning, and had the fire going all day. I couldn't remember how long the window had been opened. The time the spool fell out of the window was between one and two o'clock. When I went to raise this window I had to get on the table. I guess I could reach over from where I stood and raise it, but this particular time I got on the table to raise it. I could raise it and give it a shove and it flies up itself. The spool of cotton fell out of the window some time before Minder was coming across the street. I couldn't see anybody, and then it was not valuable enough to call any stranger to pick it up, and the boy just across the street from the store

comes over every half an hour, and I was watching for this boy that worked there. He comes to the shop. I couldn't see the spool of cotton from where I was standing; I didn't know whether it was there or not. The sidewalk slopes down towards the sewer a little; a spool of cotton falling down there would roll towards the mouth of the sewer. I didn't know where it was. I knew there was a spool of cotton down there. The lady that works for me called my attention that the spool had dropped out. I saw Minder running between the railroad track and the sidewalk, and I said, "Minder, look around and see if you see a spool of thread, and pitch it up." I didn't say to him pitch up that spool of thread out there. I couldn't see when he picked it up. I saw him sideways when he came in the room; I didn't look up from my work at all. I did not look up at him before he cut this man. He didn't open his mouth when he came in. I did not ask him where he was going, and he
63 didn't tell me that he was going to work; he didn't tell me that morning he was going to work.

The lady sits right next to me when he come in the room and placed the spool of thread on the table, and I didn't know a thing. I was pressing with a very hot iron, and when a man is pressing he has got to watch not to scorch or burn the goods. I didn't pay any attention to anything when I was pressing, and in a few seconds afterwards the lady that sits right next to me she raised herself up from the chair and began to scream. That is the time I looked around. I was pressing with the same iron when Minder came up that I had when I hollowed to him. When I turned around when the lady screamed Minder was running out of the room. I never saw Minder cut Mahoney. I did not know that he was going to cut him when he came in the room. I did not know that he was going to have any difficulty. I didn't know that that was what he came for. I worked in the shop with him at McKay's about eight or nine months ago, I guess. We did not work at the same table. He said lots of things that were foolish. He said every five minutes something else. The only foolish thing that I can recollect was carrying the cat's breakfast to it. There is a lot of people went to the shop. Sometimes the colored boy brought the cat something, but he brought it in a different way. It was his business to feed the cat. He would sit sometimes in the shop and have conversations that sound foolish. I couldn't recollect the foolish things he said.

A. BENNEY, introduced by the defendant, testified:

I am a tailor. I first met the prisoner in the boarding house of
64 Mrs. Barnett's in the boarding house where I board now, the first day I came there. I have slept with him. I was up there the day Mahoney was killed. When I come here the first time Mrs. Barnett gave me a room and told me to go to sleep a couple of nights with him; and he would come in and light the gas and read, and I would tell him to make no light, I wanted to sleep, and he would tell me he wanted to read a little while; and another time he come in and made so much noise—he was talking to himself all the time. I was not so afraid to sleep with him; I didn't want to sleep with somebody else in the room; I want a room to myself; they make so much noise I can not sleep. I would not consider the prisoner of strong mind; I say his mind was afflicted.

Many times I have met him in the street, and I know him well, and he never says "hello" until he looks around two or three times. I say, "Hello, Minder," and he never said a word until he looks around three or four times, and then said "hello." I don't believe he can sleep; he comes home two or three o'clock in the morning and reads papers and talks all the time, and keeps me awake; that's the reason I wouldn't stay there. He is weak physically, and in bad health; according to my notion, he has got a weak mind. Mahoney used very bad language to Minder. In the month of June he was sitting at the table eating something, and we was in the room eating supper, and Mahoney came in and took a chair and sat down and said: "Here is our little vice-president bastard son of a bitch." He was referring to Minder. He is our vice-president
65 in the union at that time. I heard him abuse him the Sunday that was before the Monday the killing was. I did not hear him abuse him at any other time. Mahoney treated him very bad. I told you he went in to supper. Mr. Barnett wasn't in to supper. We was five together, and he called him a bastard vice-president son of a bitch. The old lady, Mrs. Barnett, went in between them, and Minder went out and called two officers, and when the two officers come there for Mahoney he wasn't there any more. I heard him say something to him on Sunday; that was in the month of June; that was the only time I heard it; the next time I heard it was on Sunday—that day before the killing. I have known Minder seven or eight months; since I have been in this town. I have not heard Mahoney insult him at any other time.

Cross-examination.

I have been living here only since January of last year. When I came here I worked for George P. Burdick & Co. Minder was working at that time for McKay's. Mahoney was working for George P. Burdick, the same place I was working. I continued to work there until Mahoney's death. Minder was a coat maker for McKay. He worked a long time before I came here, and after I came here four or five months. Then he was Samuels' coat maker. I couldn't tell you whether he was the principal coat maker. McKay did a first-class business. I suppose he sells the best goods.

I never heard of any difficulty between these two men until June of last year at the boarding house. There was some trouble at the tailors' union before. What Mahoney said to Minder down at the board-
66 ing house did not have reference to the trouble in the union. I don't know that the trouble at the boarding house grew out of that trouble in the union. They had some trouble seven or eight years ago. Mahoney was not vice-president of the union; Minder was. That night when they had the trouble Mrs. Barnett, and only Mrs. Barnett, went between them. She did not want to see any trouble in her boarding house. She was afraid they might have trouble. When a man comes in and calls a man names like that, they might have trouble. Minder was not trying to get to Mahoney or Mahoney to Minder, but of course a man called such names as that, there is going to be trouble. That was in June. I was not sleeping with Minder at that time. Minder slept with me the first time I came here a couple of nights. I slept with G. Golden after that. I couldn't tell you who he slept with. I am a stranger and I n'ver go around the boarding place and see when he came

in; I go to my room and sleep. Some nights he comes home and sits outside and talks to himself, right on the front porch, on the outside of my room. I heard him and looked out of the window, and there was nobody there but him. I believe he takes a drink, as usual with anybody; I never looked around to see if he was drinking; I never went around in company to see if he took many drinks; I could not say he was drunk. He disturbed me a good many times this way. I told the old lady; she told me it was all right; there was no use to tell him about it. I never knew what he was talking about. I never asked him what he was talking about. He would make a fuss; he would light the gas and talk to himself; that was the couple of nights I slept with
67 him. Sometimes he kept me awake sitting down there on the porch. When I was upstairs of course I could not hear what he said. I never heard him light the gas. I don't believe this man had plenty of sense to know what is right. He never went regular to work. I never heard many times the boss complaining that he did not go to work; I never worked at the same place; the people that was working with him complained. The only evidence I know of his insanity was that he would come home late at night and talk to himself and read the paper. Many times I have been afraid to look him in the face, for he never answered. I don't know that he was drinking on those occasions. He did this lots of times. I was living in the same house with him all that time. I was afraid to meet him. Many times I have met him and said "hello," and he looked at me and never answered. He is the only man, if he is a friend of mine, that ever refuses to speak.

68 Mrs. ELIZABETH ABRAMS, introduced by the defendant, testified:

I have known the prisoner at the bar between eleven and twelve years. I know he is a very peculiar man, and what I would call a lunatic. He tried to commit suicide a couple of times to my certain knowledge; that was about ten years ago, in Atlanta. He had a box of morphine in his hip pocket. He threatened to do so in so many ways. He said he had something in his hip pocket that would take him where we would not see him any more. The only time I ever knew he tried to commit suicide here was at the time of the trial here. I have seen him lots of times when he was stopping at my house, and he said he was afraid of Andy Mahoney. He very often started home to his meals and stopped at my house, which is on the corner, very near in sight, and I ask' him why he did not go on to his meals, and he said he wanted to wait until Mr. Mahoney had gone and come back. He very often staid at my house at night, in a big rocking chair, because, he said, if he went home Mahoney would kill him sure. That was last summer, and it continued pretty near all summer. I would sit where I could see Mr. Mahoney. We all called him (Mr. Mahoney) Andy Limp, and I would make the remark that there goes the man, and he would get up and peep at him until he got out of sight. He would wait as if he was afraid of him and he would peep at him through the door. I live just around the corner from Mrs. Barnett's boarding house, in the old Catholic parsonage.
I don't know that I have heard Mr. Mahoney say anything to
69 Minder. I would not consider him (Minder) a strong man physically. I have fourteen-year-old boys who can throw him

down in a wrestle, and have done it often. He is sickly to my certain knowledge. I have often given him medicine. He became more excitable since last June. They had some trouble in the tailors' union then. I have often heard him say he would be better off dead than alive, and talk in a peculiar manner that way. He talked as a crazy man would talk on such subjects; better off dead than alive, and he didn't know what he was living for, and all that kind of foolishness. He is not married that I know of. If he is married, I have never seen his wife. Three years ago he told us that he was married, but separated from his wife. Mr. Mahoney persecuted him while he was in Atlanta. I have known of him spitting in his (Minder's) face. I knew of Mr. Minder's having him (Mahoney) arrested two or three times for using bad language and persecuting him on the streets. I can not tell how long he kept that treatment up. They were at outs there for quite a while. It has been so long ago that I can not state positively how long it lasted. I have seen him at times when I thought him a fit subject for the lunatic asylum, and I have often remarked that he ought to be there. Minder often talked about Mahoney's conduct. He told me how he treated him at the boarding house, and he came to my house and told me that he was going to have Mahoney arrested, and he has had him before Judge Freeman.

He would spit on his newspaper as he sat on the porch reading,
70 and all kinds of treatment of that kind. He abused him by using foul language whenever he had occasion to meet him. When he happened to meet him on the street he would use bad language. Mr. Minder has often come to our house and talk' about Mahoney abusing him, and that he would have to do something to get out of his way. I have seen Minder peeping at Mahoney as he passed by; he would often do that. He would watch him as if he was afraid of him. He told me that he was afraid to go home. It was in the summer time; and he was afraid to go home and sleep. He was afraid he would come in and he could not shut his room up. Why, I am under oath, and I would not say it if he had not staid at my house and tell me that he was afraid to go home.

Cross-examination by Mr. BRUNSON:

On the 22d of October my husband worked at Mr. McKay's; he did not work at Mr. Veltre's. He is supposed to be one of the tailors' union. I lived in Atlanta when I became acquainted with Mr. Minder. I have known him between eleven and twelve years. I first knew Mr. Mahoney in Augusta, Ga.; that was about twenty years ago. I couldn't tell you how long Minder has been in this country. He has often said he came from Austria, but what part of Austria I never heard him say. He is considered an Austrian Jew. I don't know where he came from to Atlanta, and I would not be positive how long he worked there. He was in the tailor business while he was there. I don't know who he worked for.

He did not live with me, but he was a constant visitor at our
71 home; he came to see my husband. He worked as a tailor while in Atlanta, and has continued as that in Macon. He worked for Marry McKay and Mr. Samuels; if he worked for Mr. Shea I did not know anything about it; I did not live in Macon while Mr. Shea was in business the later years. Minder tried to commit suicide while in Atlanta

with morphine. He had it in his pocket and told my husband and myself he had something that would take him where he wanted to go. I made fun of him in a joking way, and he said he was going where we would never hear from him any more. He pulled a little box out of his pocket and I grabbed it and asked him if he had a green back in it. I opened it and it was marked morphine, and had a white powder in it that looked like morphine. I taken it for morphine and poured it out in the back yard. It was marked morphine. That is the only attempt at suicide that I know of. It seems to me that he got it from Benjamin Cronheim; if I am not mistaken, that was the address on the box. It was just a small pill box; it would hold more than a half a teaspoonful. He did not go away. He went down to where he stopped on Hunter street. My husband went down to the boarding house and brought him home, and we considered that he had made an attempt at suicide. We found him sick. I made coffee for him and had him around the house trying to get him over it. He got over it. He staid at the house all day. He left the house; I can't say that he said he was going to work.

72 I can't tell positively how long ago that has been, but it was some years ago in Atlanta. I was living on corner of Walnut and Fourth at the time I have testified about Mr. Minder, but I do not keep a boarding house. I occupied the upper story; I couldn't tell you who occupied the lower story. He would come there and go upstairs to the apartment occupied by myself and Mr. Abrams. He (Minder) would sit in my dining-room in a chair all night long alone. That was last summer. He did that more than once. I can't say he was a drinking man. I have seen him under the influence of whiskey. It was not always at these times that I thought he was a fit subject for the lunatic asylum. It was not the cause of his periods of excitement. I can not tell you exactly the cause of those periods of excitement. There were different causes for it. If Minder was addicted to the use of morphine, I didn't know it. The sight of Mr. Mahoney would cause him to have one of those fidgity spells. Mahoney lived at the same house; at Mrs. Barnett's. Mr. Mahoney lived there before Mr. Minder did. Mr. Mahoney came up there during the first carnival that we had there, and Mr. Minder came up later, but Mr. Minder had been boarding with Mrs. Barnett. I think Mahoney was boarding there when Minder came back the last time. I would not be positive. Minder didn't watch through the blinds, but he would peek through the window when I told him Mr. Mahoney was passing. They never went to meals

73 at the same time. He would not go to the meals if he knew Mr. Mahoney was there, but he would wait until Mr. Mahoney was gone. I have known him to come up and ask me if I had seen Mr. Mahoney go back from his meals. I did not watch for the purpose of protecting Mr. Minder. He asked me because he thought I might have seen him, being on the same street I was. This hard feeling that existed between these men I don't think was caused by the trouble at the union at first. I don't know where it commenced. They had a squabble in Atlanta. I think it was because Mahoney was an Irishman and Minder was a Jew, and Mahoney didn't like him. I never heard Minder say he didn't like Mahoney. It is true that Minder had Mahoney arrested on several occasions because he was persecuted by

Mr. Mahoney. I think this trouble originated because Mahoney was an Irishman and Minder was a Jew, because I have heard it discussed. In fact, I have been told by my husband. My husband is a German. This discussion took place after the trouble in the labor union, but years ago I heard it discussed. I have heard it discussed ever since I have been married to a tailor and there has been any trouble. I have heard Mr. Mahoney say he didn't like the Jews; I would not like to repeat the language I have heard used. I heard my husband talking about it after the trouble at the labor union, but that wasn't the only time.

F. F. BLOODWORTH, introduced by the defendant, testified:

I have for the last three years been traveling; I am on my way
74 to Florida now. I know the prisoner at the bar, Minder. I have lived in Eufaula, Alabama. Minder did live there, and I have been with him quite a good deal. On one occasion when he was working for me I had been on the river, and when I came back I found quite a crowd there, and when I got there they told me that he had tried to kill himself. I went back to where he was like he was dead or dying and peeped over at him, and he was laughing. I went back to the front and said, "I suppose he is dead, or if he is not he soon will be," and went and caught him and rapped his head against the corner, and handled him pretty roughly. I called them to come and take him up to the hotel, but he woke up then. I heard of him trying to kill himself again, but I don't know that for certain. I went to the hotel because Dr. Battle asked me to remain that night. He didn't know enough and was afraid to leave him alone and asked me to remain. I went there and sit there for an hour, or possibly longer, and I got a piece of paper and said I would write to his wife, and when I did he jumped out of bed and tried to kill me. He married in Dawson. When he was living in Eufaula he worked for Schloss & Huddleston; that was about five years ago. I should think 1895 was about the date.

When Minder was drinking—when on one of those tears—he would fight a man weighing about two hundred pounds for nothing. From
75 what I know of him he is hardly a sane man. He acted mighty funny. He tried to fight a man in the hotel office, and the hotel man scratched him all over the face. I consider him quite a fool on any subject he was stirred up about.

Cross-examination by Mr. HODGES:

I was engaged in business with Minder in Eufaula only a short time. We were in the tailor business. We considered him the best tailor in town. I went into the business as an investment. I don't belong to the Methodist church, and I wasn't there, but I understand he joined the Methodist church, but he said he was going to join over again. I think he attended church. He had been turned out for dissipation, but I don't know whether he joined again. He laughed—he was drunk—and he said he would get more business. He got on a drunk and took the goods and left in the meantime. At the time I returned to my place of business and found that he had tried to commit suicide and pretended that he was dying the doctors were there and, I think, had examined him. He was lying back there when I came in; I had been gone two or three hours. When I got back I did not say anything to let him know that I was

coming. I slipped back and found him lying there smiling, and then I slipped back and said, "If he is not dead we might as well kill him," and said it loud enough for him to hear it. I went back then and caught him by the leg and began to twist and pull him around. I gave him a pretty severe twist and pulled him off the table, and his head
76 struck against a post. I understood that he had taken morphine. That night at the hotel the doctors examined him. I don't know that they stuck pins in him. He was unconscious, or seemingly unconscious, and you couldn't make him know anything. When I said I was going to write to his wife he got all excited and jumped out of the bed. I don't remember whether he cursed or not. I understood that he used morphine. I saw him take something, but what it was I don't know. I understood afterwards from a druggist that he bought morphine from him. He read some, but he couldn't express himself well. He talked about different works, and things of that kind. I don't remember what books he read. I know I let him have some works I had at the house; he asked me for them. I was in business with him only a short time. Some Jews I have been connected with were friends of his—Schloss and Huddleston, he used to work for—and they told me if I invested only a small amount and started in business there would be money in it. His wife was at home, I suppose; near Dawson, I think, she lives. I think they were together off and on. He married her one day and quit her the next morning. He didn't give me any reason. I heard him talking, but he was not talking to me.

Redirect examination by Mr. COOPER:

I understand they stuck pins in his body and he wouldn't flinch. I know Mr. Schloss. From what I saw of Minder in Eufaula, from his actions, his talk in my presence, I would say that he acted very funny at that time. I would not regard him as a sane man.

77 Recross-examination by Mr. HODGES:

I would say that under the influence of things as he was I could not regard him as a sane man—under the influence of whiskey or something of that kind. At the time he was in Eufaula I regarded him as a drinking man. Minder tried to commit suicide under the pressure of trouble; I thought that was the cause of it. From a moral standpoint, he knew the difference between right and wrong. He talked me into going into business with him. He had sense enough to get what little goods we bought. I thought we could make money, and that is what caused me to go in with him. Still, he told me he would do these things and didn't do them, but took the goods.

J. R. SMITH, introduced by the defendant, testified:

I am from Dawson, Ga. I knew Minder when he lived there. I think I know something about him. I consider him a man of weak mind. I have known him quite well. Ever since he has been there he has been with me. I was on the police force for five or six or seven years, and he would stay with me a good deal at night. I would find him sprawling about at different places and I would try to rouse him up to go home. He would hardly recognize me until I would get him back to his senses. He would like to lay up during the day and at night be

would go out for a good long while. He tried to commit suicide.
78 Occasionally I would have to go and open his shop. The people that had work for him to do, they would probably wait until Saturday night, and going in I found him sleeping on the counter. They hadn't seen him for some time. One time I opened his door—prized his door open—and found him on the counter with a lot of clothing piled up on him, in his place of business, where he had a little shop. I found him another time where he went out a mile and a half or two miles and was roaming around the woods for two or three days, and a crowd of people went after him. He left some kind of a little note sticking under Aleska and Tobin's door telling them good-bye. You could hardly understand what he wrote. He was found at the mill pond, roaming around in a swamp by himself. I don't know whether he had anything to eat or not. I know later on he didn't have anything to eat. I fed him myself for quite a while. I come on the street and found him there. He hadn't had anything to eat for several days; that was the first time. After that I bought him something to eat, or would go into a store and buy something and feed him. From what I saw of him there in Dawson I would consider him of weak mind and demented.

Cross-examination by the SOLICITOR-GENERAL:

I didn't say the only thing I knew was that he attempted to commit suicide; that is one of the matters I refer to. From my own personal knowledge I don't know that he tried to commit suicide at the mill pond. I wasn't with the party that went to look for him. He
79 was wandering around there by the pond. I know that the note was found in the Jew store under the door, and in the search afterwards he was found in the swamp around the pond. I couldn't tell you whether they went to look for him the same day they found the note or not. He was gone two or three days. They didn't pay any attention to it, but he was gone so long they got out and looked for him. I couldn't tell why they didn't pay any attention to it. I think that was about the first one of the threats he made of that kind. He did not threaten to commit suicide before that.

I had gone into the store and found him sleeping on the counter; it was no more a bed than the floor. The clothes were piled over his head. There was no covering about it. It was piled up any sort of way. I think he was in the habit of drinking. I never saw him take any morphine. I don't think that I ever heard in Dawson that he was a morphine toper. The only evidence that I have that he tried to commit suicide in the store are what I have just stated. I don't think he tried to smother himself with the clothing. I don't know anything about it; about his wandering around there at night. Occasionally I would find him lying on some box, or in some hall. He was not drunk. I don't think he had any money to buy drink with. He told me that he hadn't had anything to eat for several days. He had no boarding house. He had a room rented in the Baldwin block. He had no place to eat.
80 He had a little room rented and he took orders, but I don't know of any of them being filled. He was not working for a Jew firm that I know of. I think he boarded at Mrs. Wilson's when he first came. He came there in 1892 and 1898. He would go there and live some time and leave sometimes. In and out. When he had a

job I think he would go back and put up there. I don't know whether he staid there or not. The year I saw him wandering around the streets was about 1897 or 1898. It was during the Spanish war. He was crazy over that. He was crazy to go. I don't think he could go. He talked about some battle ship whenever he met anybody on the street; he would get up an argument. He didn't care who it was, and if they didn't agree with him, he was ready to fight. I think they considered him harmless. I did. I remember a couple of fights he had. I don't know whether they were fights or not. There was one, the last one, with a tobacco drummer, but there was no harm done. He tackled a man who was, I reckon, a third larger than he was. The fellow picked him up and shook him and a policeman came up and got him. Dr. Cheatham fined him three dollars and cost, and he had eight dollars of my money for some goods that were in the express office. The recorder tried him for this fight. He was crazy. I did not testify to that in the recorder's court; I was at home 'sleep at that time. I went to sleep in the morning when I went home and got up at one or two o'clock. I went on duty at nine. My Jones Seay, the chief police, arrested
81 Minder. I think Minder married in Eufaula. He married a girl who came from about Dawson. I think it was Miss Sessums. They lived together only a short time, two or three days. I don't know what made them separate. The woman turned out and gone away.

Redirect-examination by Mr. COOPER:

From what I know of Minder while he lived in Dawson, and what I have seen of him, I would not think he knew the difference between right and wrong.

Recross-examination by the SOLICITOR-GENERAL:

At times I suppose he knew it was wrong to kill a man. At other times I have seen him when he was wrought up over any little frivolous thing. He didn't know who he was and he didn't know a white man from a negro. I have seen him when he couldn't tell a white man from a negro. I suppose he would know it was wrong to steal.

In rebuttal by Mr. COOPER:

If he was excited over a matter, I don't think he would know right from wrong.

R. L. BARNES, introduced by the defendant, testified:

I am from Dawson. I have known Mr. Minder since 1892, as well as I remember. He lived in Dawson on and off for a period of about four years, I think. He attempted to commit suicide while he was there. He went off in the woods about three miles; he was
82 gone two or three days. I don't remember the exact time. They found him nearly dead. I saw him right after he was brought to town; he looked like he was nearly dead to me. He looked like he was hungry and pale and weak. He left a note under my door at the time he left that night. He went on to say to Mr. Alesk, that was the proprietor of the store; I work next his shop; he told him good-bye. It was a great long letter that we couldn't read. It was to make some disposition of his tools and pay off some little debts as far as it would go—something like that. I consider him a man of weak mind.

Cross examination by SOLICITOR-GENERAL:

He said he wanted his debts paid; gave that directions in his note. It was indicated in his letter that he was going to kill himself. He said he was going to a place where they would never see him any more and left it understood that he was going to kill himself. The note was found under Aleska's store door. It was found the next morning when we opened the door. I think the searching party went out after him the next evening. I don't know why they didn't go sooner. They couldn't. Mr. Aleska didn't try to find him. He didn't know where he was. There was some excitement about it. I don't know whether he had made threats of this kind before. I don't know whether he mentioned going to the mill pond or where he was going. He specified it in his letter, so that no one would be accused of his death; that he came
83 to his death with his own hands. It was just about as I said a while ago. All that I can remember. He went on further to say that he was going to take his life with his own hands. They were searching for him the next day, but didn't find him.

Redirect examination by Mr. COOPER:

At that time I couldn't answer positively whether he knew the difference between right and wrong. At times I have seen him when I know he didn't.

Recross-examination by SOLICITOR-GENERAL:

He drank some. He was not a morphine toper that I know of. He might have had whiskey in sometimes, those times I spoke of, when I wouldn't know it, or morphine. At times he would know the difference between right and wrong. I suppose at sometimes he knew it was wrong to steal. It is a hard question. Sometimes he would talk right bright and sometimes he would go on and speak in a foolish way.

In rebuttal by Mr. COOPER:

He said something to me about the battle ship. I heard him talk a good deal about the "Oregon," or the "Origin," as he called it. He was always talking about it for two or three weeks or a month—as long as the war lasted—a good while, I know. He would stop on the street and commence talking. He seemed to have it on his mind a good deal. I believe he said that the "Oregon" could whip the whole world.

84 In surrebuttal by the SOLICITOR-GENERAL:

That was during the Spanish-American war. A good many people talked about the "Oregon" battle ship. I talked about it myself a little.

M. G. STATUM, introduced by the defendant, testified:

I live in Dawson. I have been living there eighteen or nineteen years; I am in the livery business. I knew Minder while he lived there. Minder was missing, and they had gone to hunt him. I saw the crowd come back with him; they found him over near a mill pond, about a mile or two from town; he had been gone a day or two; he was in a pretty wretched condition; when I saw him he looked pretty bad; he looked like he hadn't had anything to eat; he looked like anybody else

would look who had been lying out in the woods. I don't know of my own knowledge that he tried to commit suicide at any other time. Just the reports there. From what I know of him and from what I saw of him there I should consider him a weak-minded man, and my general knowledge of him was that he was weak-minded. There was nothing else I know of particular. When he got excited about anything he would go on pretty wild; he would talk about the battle ship "Oregon;" he thought that battle ship could whip the whole world; he was terribly interested in the fight; he would get fighting mad; he was just wild about it, and people looked on him as weak-minded, and would very often
85 differ with him just to hear him talk. Just as soon as the dispatches came in he would be ready to get right into it.

Cross-examination by the SOLICITOR-GENERAL:

A great many people talked about the battle ship "Oregon." At times I hardly think he would know anything when he got wrought up; he would get wrought up about anything that directly interested him; he seemed to have the ship business on the brain; he took a great interest in the war and wanted to go to war, but I don't think they would have him. I don't know that they wouldn't have him; I just heard they wouldn't have him. When he was talking about this ship he would do a man violence then, only they never went far enough with him. I couldn't say that he knew it was wrong to steal. Most of the time I think he had mind sufficient to know that, but I think when Minder was right up on his mettle I don't think he would know anything right or wrong. Minder wanted to go to the Spanish war; he was very much interested about the battle ships, but the "Oregon" was the main one with him. At first start, when they were not having fun about it, something was said about it and he would go on; they may have teased him to a certain extent. When they were talking about it he would get very excited.

W. B. CHEATHAM, introduced by the defendant, testified:

I knew Minder when he lived in Dawson. I have studied
86 medicine, but I was a practicing physician for 15 or 16 years. I suppose he lived in town two or three years. If evidence shows that a man has been persecuted by another for ten years, spat upon by another on the streets, cursed on several occasions for a damn son of a bitch, and evidence is introduced going to show that the man is at times insane, considered a lunatic, that he is weak-minded, weak physically; the evidence going to show that the man, under such circumstances, went to a store and bought a knife, a long-bladed knife, a spring-back knife, and went to where another person was at work, and without a word of warning jumped upon him and stabbed him to death, I would say now, from my opinion as an expert witness, if these facts were established as the truth, that it was the act of an insane man.

Cross-examination by the SOLICITOR-GENERAL:

If a man had been at work as a tailor for a number of years constantly, held responsible jobs right along, and has a difficulty in his union with some of his brother members of that union; this man meets the deceased on one day and then is called a God damn son of a bitch, and the next

day this man goes to a store and buys a knife, a long, spring-back knife, walks into this place where he knows the man with whom he had the difficulty is at work, and without saying anything goes to his back and plunges his knife into him, there is not anything in those facts
87 that would necessarily indicate insanity. I think these matters had so preyed up a diseased mind. I would say that a man is insane when everyone knows that he is not responsible for his actions. I can't answer when he gets to that point where he is not responsible for his actions. I think the line is a very delicate one. I would feel able to form an opinion from these facts. I did not see any evidence of insanity while Minder was in Dawson, only from reputation. I suppose I knew him for two or three years; I don't know the exact time. I was mayor of the town. I think the mayor pro tem. tried him for fighting, and he was convicted and paid a fine.

Redirect examination by Mr. COOPER:

I think there is such a thing as paranoia insanity. I am not posted on the different forms of insanity. You might say it was a delusion that causes this form. It is the straining of the mind, you might say, in one channel. I think constant persecution would disease any mind. If a person, a man, had been cursed at by another on several occasions, insulted, spit upon in the streets—that is, if the evidence shows that to be true—been called a God damn son of a bitch. Evidence has been produced that the man tried to commit suicide on several occasions by going off in the woods and perishing himself for two or three days, and by taking morphine. I would say that the act of buying a weapon, a deadly weapon, preparing a weapon, going to the man's place of
88 business, and without a word of warning commenced stabbing the man where he is sitting working, I would say that he was laboring under the insanity of persecution.

Recross-examination by SOLICITOR-GENERAL:

I don't know that I can answer whether a paranoia exist without a delusion; I would have to read up the definition.

In rebuttal by Mr. COOPER:

It has been so regarded by medical authorities, that suicide or an attempt at suicide is the highest evidence of insanity. I would regard it so. The great medical writers tell us that is the truth.

In surrebuttal by SOLICITOR-GENERAL:

I never read Moseley's Responsibility of Mental Diseases.

J. ASHER, introduced by the defendant, testified:

I am from Albany, Ga. My business is general mercantile business. I knew Minder personally when he lived there in 1899. I knew him from March until June. I knew of him trying to commit suicide there. In the spring of 1899 Minder rented the rear part of the store for a tailor shop, and he occupied it from March until June, about the tenth; during the time he tried to commit suicide by drowning himself, and one morning I was in the front part of the store, and I heard such a
89 noise going on in the back. There was nobody about but us, and it was a strange noise, and an empty laudanum bottle was lying

right there on the floor. If he hadn't received prompt attention he surely would have died from the effect. I didn't call a doctor; I gave him something. It was some vinegar or something of that sort. He was breathing very hard and was very far gone. By proper attention to that, to restore him by making him vomit the poison. It was labelled poison. On various occasions he employed some lady tailors, and had lots of work already cut out, and he let them sit around there for hours at a time without going to work. I consider anybody guilty of any such thing not of sound mind. Sometimes he was rational as anybody else. Other times he wasn't. I don't know what you would call him. He went into the country and run a truck farm. At the time his wife come to see him, and she remained about a week, and after that a gentleman came from Americus and lead his wife off. Mr. Minder got extra violent, and I thought he would be better to go out to my truck farm, and while he was out there Mr. Minder was walking around at any hours, day and night. I saw it. The colored man report to me what Mr. Minder was doing. He plucked the water melons and like to have destroyed five acres of melons and onions. I told Mr. Minder I could not stand any such treatment as that, and to go away, and he went away,
and I didn't hear any more of him until I got notice to appear as
90 a witness in the case. He plucked the melons and throwed them down. He took them up from the vine.

Cross-examination by the SOLICITOR-GENERAL:

He tried to drown himself in Albany in the Flint River. He lay himself down where he couldn't help himself being drown if some colored men hadn't pulled him out; he lay down in the edge of the water and they dragged him out. I never saw the man take any whiskey that I know of since he was around me. I don't know whether he was drunk or sober. He didn't tell the colored men that he was going to lay down there. The colored men reported that Minder like to be drowned, and they pulled him out; that he lay down in the water with his feet in the water, and the water was sure to get him. The time he tried to kill himself in my store I was in the front of the store and heard hard breathing in the back part. The store is not a very large store and I could easily hear what was going on in the back part of the store. He never left anything. I found an empty bottle on the floor. He hadn't been back there long because he was walking back there when I was busying myself to clean up. About a quarter or half an hour after he went back there before I heard the noise. He was not walking about the store. I was cleaning up and he passed me. He went back to his place of business. He was the only one in the store besides me. He had his eyes closed; I don't think he was asleep. I tried to rouse him, but it took all my might
to do so. I only had a little of vinegar there, and I tried to
91 give him that. I had a half a bottle full, and drenched him like a horse. It was not exactly a quart; I never measured it. I had it to use on my victuals; I had it sent to the store. I could say I never measured it; it may have been a pint. It was straight apple vinegar. I did not have any pepper in it. That made him vomit. I rubbed him and walked him about. He is a small fellow, and I took him under his arms and walked him about. I did it by myself. I think his head

fell about. I don't recollect. I never had such an experience with anybody. I couldn't say how long I walked him about. I couldn't keep a minute account of such things. I didn't ask him what he had taken it for. The reason I say it was another man from Americus took his wife off and run away. That was before he took the morphine, and after he took the morphine he went into the country. I smelled the empty bottle, and the smell from his breath indicated he took the laudanum. I can not say how much he took. I never saw him take it. I never asked him any questions. The bottle was about the size of a quarter of a dollar bottle. I don't know that it was full. He didn't tell me that he had taken it, but I know from the smell of his breath, and it was exactly the same as the smell from the bottle. After that I sent him out in the country. I didn't know him before until I rented him the house. I had about forty acres out at my farm planted in different kind of vegetables;

probably five acres or more in watermelons. He took the whole melon and broke it off from the vine. I saw him and made him quit.
92 I didn't say he pulled the whole five acres; he liked to destroy that much. If my man had not been there, he would have destroyed that much. He must have pulled several hundred or more. I never saw him pull all those. The colored boy sent me word, and I saw the evidence lying there on the ground, that they were pulled. He paid me the rent for the store. He pulled some onions and some other kind of vegetables. I did not count the onions. We had about two acres, and there was about five bushels left. He either ate them or threw them away. I saw him pull them; I was over in the field where the corn was, and Mr. Minder walked around to the place and pulled them and I was where the broom corn grew. It is a pretty good little distance to the broom corn, and when I got there I stopped him. He had pulled a great many. I told him he would have to leave my place, and he did. He pulled them green. They were not more than half matured. He did not cut any of them.

JOSEPH MINDER, introduced by the defendant, testified:

I am a brother to the prisoner. I live in Athens, Ga. I came from Austria. My brother came to this country four years before I did. I came in 1884 and he came in 1880. We were raised together. He got hurt several times. He was advised to go up in the country and bring in some whiskey. He went, and another man from the same place he knew; he went there and he meet on the way outside of the
93 city limits on a bridge, and some men who got the whiskey. The men tried to take this whiskey. I heard that. And he was hurt. He was thrown from a high wall way down on a low place to a rock. The top of his head was hurt somewhere on his back. He was between sixteen and seventeen then. He was always recognized as weak-minded all of his life, especially since he got hurt. I was always scared of him. I considered him weak-minded while he was in Austria, all during his boyhood. We used to sleep together, and he used to be restless. I have seen a good deal of him since he came to America; see him at different places. I have been living in Gloversville, N. Y. I have been in Athens eight years.

Cross-examination by the SOLICITOR-GENERAL:

I am going on thirty-six. My brother is about forty-two or forty-three. The accident happened to my brother when he was between sixteen and seventeen somewhere. He was here over four years before I came. He is a tailor. I am a tailor; we all learned at home. My brother lived in Gloversville, N. Y., when he came to this country. I have been there by myself. He left. I don't know exactly where he has been. Four years ago he came to Athens to me. I have been here before in this State about ten years ago, when I saw him in Atlanta. I saw him about four years ago in Athens, and I did not see him any more until he got into this trouble. During all this time I have been
94 in Athens working for myself. At the time he got hurt he went to get some whiskey, and before he put his whiskey down in town another man met him and wrestled to take it away from him. He had to go out in the country, and that man wrestle with him on the way and threw him over a high wall, and threw him down a low place, and he got hurt. They brought him home; he could not come. They brought him home in a wagon. He was hurt. I recollect how he was lying up for several weeks. I don't know whether they got the whiskey away from him or not. He didn't work for several weeks. He got well afterwards. I don't know exactly what it was because I was only a boy. After my brother came to this country he worked at different places. We lived in one town together for a while. He came to me about four years ago in Athens. I was here when my brother was tried before.

Redirect examination by Mr. COOPER:

My brother will weigh maybe a little over 100 pounds. He was never recognized for a strong man, never in his life. He was—always had a weak mind. I don't think he is a strong man; he has always been sick and nervous.

W. T. EVANS, introduced by the defendant, testified:

I am the assistant jailor. I have been down there about five months. I was there when Minder was tried before and when he cut him-
95 self in the prison cell. He cut himself during the trial of his case last time, about twenty or twenty-two times. It was on the 10th of December; half past one o'clock. When they brought him back from the court. They were all out in the corridor. There were six or seven there and a prisoner from Laurens County. Fordham is his name. He is in jail in Dublin. He was the first man to give the alarm and the first one to him. I was sitting downstairs and they hollowed to me. All these prisoners have left Bibb County jail. There are none there who were in the cell with him. I found Minder down in the cell. He was in his shirt sleeves; both shirts were open and he had a knife, a small penknife, sticking himself in the left nipple. He had the knife in his right hand stabbing himself here and there, and I knocked his hand and knocked the knife out, to keep him from cutting himself any more. The knife was hardly as large as that one. It was like that, but hardly as large. Mr. Menard, I think, has the knife. It was not large enough to produce pain. He had the small blade. He had stabbed himself about twenty or twenty-two times. He bleed very little. He

never suffered to amount to anything. They brought him to the court-house that afternoon. He drank his coffee every morning, but he went two or three days without eating. He said he was going to starve himself. I don't recollect how many days he went without eating; it was two, three, or four; something like that.

Cross-examination by Mr. HODGES:

96 When he was tried before I did not bring the prisoner up. I was at the jail when he was brought back. I don't know at what stage of the case it was. I heard some one say it was the examination of the witness—taking evidence. I suppose it was three-quarters of an hour after he came in jail before I went upstairs and found that he had cut himself. He had dined. He occupied the cell with the Federal prisoners, with the prisoners from other counties. He had never had a knife before to my knowledge. He ate with a spoon. He got the knife from a prisoner that was there for moonshining. The knife was there when I went to work at the jail. I don't know how it got there. I only heard Fordman calling and the other prisoners talking in the corridor. I asked him what he was doing, and he did not say anything, but kept on sticking himself, and I knocked the knife out of his hand. That is the knife. He was using it something like that [indicating], holding it loose like that. He had about twenty wounds. He did not become unconscious to my knowledge. He was simply bleeding. There was not much blood upon his clothing when I got to him. Mr. Stephens brought him up after dinner, I think. When they brought him back I put him back in the cell. One or two days he could not walk around any—staid in his cell. Very soon after they brought him down there and put him in his cell the prisoners said that he was going to starve himself and wouldn't eat. Of course I took him his meals. I
97 wouldn't have time to wait to see if he was going to eat. I guess he starved himself until he got hungry. He eats al' right now; in good health. I have had charge of him ever since he was committed to jail. His conduct had been very good. I have talked to him very little. He has sent off letters to his friends in Macon. I have seen fifteen or twenty letters that he wrote. I don't know whether he has a friend in Augusta that he writes to. All the letters that I have seen are to friends around here. He has written to Mr. Abrams and Jake Samuels. Minder reads while he is in jail, papers and books and the daily papers, possibly a few novels—general literature. I very seldom talk to him. Friends would come in and ask him how he was feeling, and he would tell them. Mr. Samuels, Mr. Abrams, his tailor friends, came to see him, and his counsel came to see him.

J. H. WORSHAM, introduced by the defendant, testified:

I am a physician. I remember seeing Minder, when he was tried here before, in jail. They say he had stabbed himself over the region of the heart, and he had a gash on his wrist there. I dressed his wounds after Dr. Barron; I dressed them a day or two afterwards. Doctor Barron was the first doctor to him, so they say. They were only flesh wounds. They may have been a little sore. I don't think he suffered much from them. I didn't probe any of them. I judge, from the looks, that they

went through the skin. I don't think any of them were as much
98 as a quarter of an inch in the flesh. I couldn't say positively. They were just over the region of the heart. There were about twenty or twenty-two wounds. The worst-looking one was on the wrist. It was just through the skin. I don't think the other went any deeper than that. I never probed any of them.

Cross-examination by Mr. HODGES:

They were flesh wounds over the heart. There were twenty or twenty-two of them; I have forgotten. It isn't true that they may have been caused by a pin point; it looked more like a knife blade than anything else. Made with the point of the knife blade that way. I don't think he suffered but very little pain.

Defendant closed his case.

M. R. FREEMAN, introduced by the State, testified:

I occupied the position during the month of June last year as city recorder. I know Minder by sight. I knew Mahoney, Ferris, Abrams, and Lee Brown; I wouldn't know them by name. I tried a case in which he was prosecutor. I had an occasion to examine him to the extent I believed what he had to say. In my opinion of this man in June of last year, at the time he testified before me, I would say he was a man of sound mind and knew the difference between right and wrong.

99 R. B. BARRON, introduced by the State, testified:

I am a practicing physician in Macon. I was called on the 11th of December last year to see Mr. Minder at the jail. He had fifteen or twenty stab wounds over the region of the heart. I think his condition was such that he could attend court, and so expressed myself in court on that afternoon. I saw him between three and four o'clock. Minder was in jail when I saw him. When I came and testified before the judge he was here. I told the sheriff that I thought that he could come to court, at the jail. I think he was in condition to stand his trial. Those wounds were slight. He lost some blood; not a great deal; about an ounce or two ounces. I didn't probe the wounds. I didn't deem it necessary.

Cross-examination by Mr. COOPER:

I did not probe the wounds. I examined the tissues surrounding them and I deemed it unnecessary. I couldn't say how deep they were. They were wounds; I thought it would be bad practice to probe them. There was some pain attached to them. No doubt he suffered. He lost some blood. I saw the scar on his wrist; that amounted to practically nothing. If it had gone a quarter of an inch deeper it might have severed the radial arteries. I think, to be exact, he was stabbed seventeen times. Seemingly he is a weak man.

HOLMES JOHNSON, introduced by the State, testified:

100 I was foreman of the grand jury at this term of the court. I was foreman on the day that the case of the State vs. Ferris and

Herman was before the grand jury, in which Minder was a witness. I heard Minder. He testified in a clear, accurate way. From my observation, the manner, character, and demeanor of the prisoner at the bar before the grand jury at the November term of this court, when I was foreman of the grand jury and heard his testimony, I think at the time the prisoner of the bar was a man of sound memory and discretion; that is, a person who knew the difference between right and wrong. His evidence was given in a clear, intelligent, and accurate manner.

Cross-examination by Mr. COOPER:

I had never seen him before to have known him. I haven't seen him since we had him before the grand jury until this trial. He is an entire stranger to me.

J. W. NISBET, introduced by the State:

I was secretary or clerk of the grand jury during the November term of this court. I was present at the meeting of the grand jury at the time at which the prisoner of the bar was a witness. I recollect the cases of Ferris and Herman he was prosecuting before the grand jury for assault and battery. I heard his testimony in that case. I gave close attention to it. I was taking notes of the testimony. We had
101 no stenographer. I have my opinion as to this man's insanity or sanity. My opinion is only as to his insanity when he appeared before the grand jury. I noticed that witness a good deal more closely than I did any other witness. Of course I had heard about the murder, and I had never seen Mr. Minder. I observed him very carefully, as I had never seen him until that day, and I have never seen him from that day to this. There was nothing peculiar about his conduct. It was perfectly sane, so far as I could see, and I observed him very closely. His evidence was very clear. It was very straight. Of course he spoke a little broken English, which required me to pay a little closer attention to him than I would do to any other witness. My opinion as to his sanity or insanity is based or founded absolutely upon what occurred in the grand jury room. That is the only time I ever saw him. From my observation on that occasion, from his testimony, and from what I saw and heard on that occasion, he is a person of sound memory and discretion; that is, a person who knew the difference between right and wrong. He struck me as being as sane as any man before the grand jury.

W. B. BIRCH, introduced by the State, testified:

At the December term, 1900, of the city court of Macon I was solicitor. I recollect two cases tried some time between October and the
102 first of January. The exact date I don't remember. The cases were returned from the grand jury and transferred from this court to that court some time in the fall of the year. I recollect the prisoner at the bar. He was a witness in one of them, or possibly both. Both cases were not tried. I talked with the prisoner. I never saw him until that morning. I had a conversation with him before I put him on the stand as a witness, and then examined him as a witness. I necessarily paid attention to what he said. I have an opinion as to his insanity or sanity at the time he appeared in the city court of Macon in the cases against Ferris &

Herman. That opinion is based upon the answers and the testimony he gave in that particular case only. I never saw him in my life until he was order' up to court upon my request. My opinion was that he was a sane man from the questions that were asked him and the answers that he gave in that particular case. I know nothing about anything else.

Cross-examination by Mr. COOPER.

I have no means of knowing whether he was crazy. I have seen a great many people who looked like they were crazy who were not. I am not an expert. I do not know anything about paranoia insanity. I didn't say that I could look into a man's face and tell whether he was crazy. On the examination of a witness on the stand in a particular case any man would form an opinion either that he was sane or insane when asked about it a short time afterwards. I said he appeared to be
103 a sane man at that time—on that particular occasion. I never examined him on any other subject. I never saw him before until that morning. I was the prosecuting attorney. I had a great many cases. I examined quite a number of witness' during that week. I didn't attempt to try him for insanity or sanity. I am not passing whether he is sane or insane when I am prosecuting a man. I said I formed the impression that he was sane from his testimony. I was solicitor-general down there one year. I think this examination of Minder occurred by the first week in December. I would not be positive as to the time—since the homicide was committed. I know that it was after the homicide on account of the development in that case and my knowledge of the fact that the murder had been committed before that time. It is just the same as it is with you. I have conversed with you long enough to believe that you are sane. You can't look into a man's skull and tell what brains he has got. I judge from the conversation I had with Minder, the conduct of the case. I say that I am not an expert and I don't know anything about insanity. I simply formed an opinion from what passed in the city court. That is all I know. I never studied medical jurisprudence only to a limited extent.

E. W. KLATT, introduced by the State, testified:

I know I. Minder, the prisoner at the bar. I have known him since 1886 or 1887. I am a tailor; so is Minder. He did not work with me. I know him quite well. I have talked with him. I am a
104 member of the tailor's union, and president of the union. He was vice-president. I knew him also in the union in Atlanta. I never put him to be insane. I know he is sane. I gather that opinion from conversation in company with him—from talking with him.

Cross-examination by Mr. COOPER:

Klatt is my name. I have lived in Bibb County since 1893.

P. T. STEPHENS, introduced by the State, testified:

I was jailor of Bibb County at the time of the killing of Andrew Mahoney. I never knew Minder until he was brought to the jail. He has been in jail in my custody and control since that time. I have my opinion as to the sanity or insanity of the prisoner at the bar; it is based upon his conduct while in jail. I saw him pretty near every day, and

when I don't see him I hear from him. I have had a conversation with him. His conduct has been just the same as any other prisoner in jail—nothing wrong about it. I have seen his letters to different people. I couldn't name them now. I have seen him writing to Mr. Cooper. He wrote to his counsel. I think he wrote to Columbus. I don't think I would remember the names. He received his friends in jail, about everyone of the tailors, and some ladies; one lady in particular called upon him. His habits were just like any other prisoner, only he wanted a little more done for him, and he would kick about it. He would want us to get
105 something for him. He would want something to eat. He would get one of the girls, a trusty around there, or one of the boys who stay and help—he would give them a dime or a quarter, and if they didn't bring the right change, or what he sent for, he would kick about it. For a long time he wouldn't eat much, and this lady—one of the tailor's wife—used to bring him soup and stuff like that. He ate that. He didn't want to eat the jail food. And, furthermore, he said he wasn't going to eat it if he starved himself to death, and I said, "Well, I can't push it down you." I suppose when he got hungry that made him eat. I recollect the time he tried to cut himself in December. I did not pay any attention to whether the State had rested when I took him back to jail. I was at the jail with him during the dinner hour. I saw him a few minutes after he cut himself—as soon as we could go upstairs and get to him. I didn't go in the cell; I had to lock on. Mr. Evans on always stays out and locks on the other. Mr. Evans brought him out there. He was bleeding, but you had to open his shirt to see it. You couldn't see it on the shirt. I brought him downstairs and asked him, "What are you doing? What made you do this?" He hesitated a moment, and I said, "Don't you; it is wrong doing this way. You ought to go and try your case." He said: "Well, I am sorry now; but my brother and everybody looked like they were going back on me." I don't know whether I was here when his brother was called before the judge on the trial. I was here when the judge told him he had
106 better come when he heard a subpœna was issued for him. I think the prisoner was here. After Minder had cut himself I brought him downstairs and sent up town and got a physician. I examined the cuts myself, but I thought I would be on the safe side, and I would get a physician there and dress him up and get him up to the court as soon as possible, because I didn't want to delay the court. When the court postponed the case I carried him back to jail. His conditions were all right; he got well. I suppose he could have killed himself with that knife if he had wanted to. That is the knife—just like it was taken from him. I say he is a sane man by his general conduct ever since he has been with me. The general facts I have just related.

Cross-examination by Mr. COOPER:

He bleed very little. I suppose he was sore afterwards. I could not tell whether it pained him or not. I should think it would pain him. We assisted him to get up to the court. He laid down in a chair himself; I never laid him down. He was groaning; he acted like a man suffering.

ALBERT MCKAY, introduced by the State, testified:

I know I. Minder, the prisoner at the bar. I have been knowing him about two years. He has been in our employ. Our business is merchant tailor. He was in our employment for about two years as coat maker.

107 I base my opinion as to his sanity or insanity upon his workmanship and conduct. I saw him most of the working days for two years. I had occasion to observe him as I went about his work. I think the prisoner at the bar is capable of knowing the difference between right and wrong. I saw him the morning that he killed Mahoney. It was about a half an hour before the killing. He came in the back of the store. He said he wanted to go up in the shop, and I told him he couldn't go up there. I told him he had better go home and get sober. He left then and I didn't see him any more until they arrested him.

The State introduced the knife in evidence.

The State closed.

We agree that the foregoing pages contain a true and correct brief of the evidence had on the trial of the case of the State vs. I. Minder, charged with the offense of murder.

This April 15, 1901.

JOHN R. COOPER,
HERMAN BRASCH,
Counsel for Minder.
WM. BRUNSON,
Sol. Genl., M. C.

This brief of evidence approved as true and correct, and ordered of file as part of the record in said case. This April 15, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

Filed in office, April 15th, 1901.

ROBT. A. NISBET, *Clerk.*

108 THE STATE } In Bibb superior court. November term,
v. } 1900. Bill of indictment for murder.
ISIDOR MINDER. } Motion to continue.

And now comes the defendant, through his counsel, and shows to the court that there are residents in Eufaula, Ala., the following-named persons, who are now living beyond the limits of the State of Georgia, to wit:

Dr. W. P. Copeland, Hugo Schloss, Victor Milton, C. M. Thompson, E. B. Freeman.

Movant shows that said witnesses are well acquainted with the defendant and knew defendant for a long time while he lived in Eufaula, Ala. That all of said witnesses, were they present in the court or had they the op'ortunity of testifying, would swear that the prisoner was insane; they have known the prisoner for some time, and they all consider him a man of unsound mind, and that so long as they have known him they have considered him a lunatic and insane and irresponsible for his conduct.

Movant shows that all the powers of the court have been exhausted to

procure the attendance of said witnesses to this court, and that a subpœna issued from this court has been duly served upon each of them by being delivered by mail and endorsed by the order of the court, but each of them refuse to obey the mandates of this court, and the court has no authority under the constitution and laws of the State of Georgia to procure their attendance here or to procure their testimony, and their depositions would be inadmissible in evidence if obtained.

109 Movant says that the testimony of these witnesses is valuable in proper defense of his case. That they knew him at a period of life when no persons here residents or abiding in Georgia knew him, and without their testimony defendant can not go to trial.

Movant says it would be unconstitutional to try him for his life without the testimony or depositions of said absent witnesses, and that if he was tried without being afforded process by which either to compel the attendance or to procure the depositions of said witnesses, that defendant, who is a citizen of the United States and a resident of Georgia, would be deprived of his life, liberty, and property without due process of law, and would be denied his right and privilege and immunities as a citizen of the United States in violation of the Constitution of the United States, and particularly the 1st paragraph of the 14th amendment thereto; and in violation of said amendment would be denied the equal protection of the laws with American citizens of other States of this Union where the State and Federal process affords the defendant means to secure the depositions of nonresidents witnesses in capital cases, and the State allows the introduction of such depositions in evidence in behalf of the defendant in such other States. Movant says that unless the State will consent to the introduction of depositions from said nonresident witnesses and will afford him a reasonable opportunity to secure the same petitioner will be denied the equal protection of the laws and will be deprived of his life and liberty without due process of law.

JOHN R. COOPER,
HERMAN BRASCH,
Counsel for prisoner.

110 In person appeared John R. Cooper and Herman Brasch and Isidor Minder, who, being duly sworn, deposes and says that the facts in the foregoing petition are true and correct.

JOHN R. COOPER.
HERMAN BRASCH.
I. MINDER.

Sworn to and subscribed before me this 11th day of Feby., 1901.

ROBT. A. NISBET,
Clk. Supr. Court.

THE STATE } Indictment for murder. In Bibb superior court.
v.
I. MINDER. }

CHARGE OF THE COURT.

GENTLEMEN OF THE JURY: The defendant, I. Minder, has been indicted in an indictment charging him with having committed the crime

of murder, the indictment charging that in this county, on the 22d day of October, 1900, that the defendant, Minder, unlawfully, wilfully, feloniously, and with malice aforethought made an assault upon A. J. Mahoney with a certain knife, the indictment charging that that was a weapon likely to produce death, and that the defendant did unlawfully, wilfully, feloniously, and with malice aforethought cut and stab the said Mahoney with that knife, inflicting upon him wounds from which he, Mahoney, died, and charging that the defendant is guilty of the crime of murder. To that indictment the defendant enters a plea of not guilty, and the indictment and plea form the issue that you have been empaneled to try.

The defendant enters upon his trial with the presumption of innocence in his favor, and that presumption of innocence which the law sur-
111 rounds him when he enters upon his trial remains with him until the State has introduced evidence which satisfies your mind beyond a reasonable doubt that the defendant is guilty.

A reasonable doubt is such a doubt as an upright and intelligent man would have and hesitate to act upon in matters of the highest concern to his own interest. That doubt should arise out of the case itself, and not from something outside of and not connected with the case. It may arise from an insufficiency in the testimony; it may arise from a conflict in the testimony, but from whatever cause it does arise, if it leaves your minds wavering and unsettled as to the truth of the case, so that your minds do not settle to the conviction of the defendant's guilt to a reasonable and moral certainty and beyond a reasonable doubt, it would be your duty to give the defendant the benefit of that doubt and acquit the defendant. Reasonable and moral certainty, however, is all that is attainable in legal investigations. Mathematical demonstrations is not possible in legal investigations, and while the State is required to show a reasonable and moral certainty and beyond a reasonable doubt the guilt of the defendant before the State is authorized to ask a verdict of guilty as to the defendant, yet if in the case the State does show to a reasonable and moral certainty and beyond a reasonable doubt the guilt of the defendant, the jury would be authorized to convict the defendant.

The jury are the judges of the law and the facts. In this way you take the law as given you in charge by the court, apply it to the facts as they come to you from the witness stand from the witnesses for the
112 State and from the witnesses for the defendant, and from a consideration of the law and the facts thus obtained reach a general verdict of guilty or not guilty that shall speak the truth of the case.

It is the duty of the jury to reconcile the testimony of the witnesses who testify in the case, if there is a conflict in their testimony, so as to impute perjury to no witness in the case. If, upon a consideration of the case, you find a conflict in the testimony you can not reconcile, it is your duty to believe that witness or those witnesses that you think best entitled to belief, looking to their manner on the stand, their relation to the case, their relation to the parties in the case, their interest in the result, their familiarity with the facts they testify about, the reasonableness or unreasonableness of the facts they relate, and their personal credibility so far as the same legitimately appear in the trial of the case, the jury being exclusively the judges of the credibility of the witnesses and the weight that you give to their testimony.

A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention or criminal negligence. Intention will be manifested by the circumstances connected with the perpetration of the offense and the sound mind and discretion of the person accused. A person shall be considered of sound mind who is neither an idiot, a lunatic, nor afflicted by insanity. A lunatic or person insane shall not be found guilty of any crime or misdemeanor with which he may be charged.

113 Murder is the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either expressed or implied. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart. The jury will perceive from the reading of the definition of murder that malice is one of the essential ingredients of murder. The legal meaning of the term malice is not confined to particular animosity towards the deceased, but extends to an evil design in general. Malice is the intent to kill a human being where the law would neither justify nor in any decree excuse that intention if the killing should take place as intended; it is the unlawful intention to kill without justification or mitigation. A man may form an intent to kill, do the killing instantly, and regret it as soon as done. Malice must exist at the time of the killing; it need not have existed any length of time previously.

The contention of the State in this case is that the evidence established the fact beyond a reasonable doubt to be that the defendant in this case, in this county, prior to the finding of the bill of indictment, made an assault upon the deceased; that he made it with a weapon likely to produce death, and inflicted upon him numerous wounds; that the reason why the defendant inflicted those wounds upon the deceased was

114 because of a grudge against the deceased because of the fact that the deceased had previously and on a prior day cursed the defendant, and that the defendant actuated by malace, with the intent to revenge himself, procured a weapon, prepared it deliberately for that purpose, sought the place of business where the deceased was engaged in his work, and that while the deceased was engaged at his work and in such a position that the deceased did not even know of the presence of the defendant in the room, that the defendant assaulted the deceased with the knife with the intent to kill him; that it was done deliberately, wilfully, feloniously, and with malice aforethought, and that there was no circumstances of mitigation, justification, or excuse for that act, and the State insists that it was the act of a sane man; that the act was the act of a person of sufficient mental capacity to be held responsible for that act, and that the defendant is guilty of the crime of murder.

The defendant contends that the mental condition of the defendant was such that if he committed the act of killing Mahoney, as claimed by the State, he is not criminally responsible for that act, because that at the time the defendant did not have sufficient reason to distinguish between right and wrong in reference to the particular act claimed by the State to have been committed by him in the killing of Mahoney. The defendant further contends in the case, that even if the evidence does show

that he did kill Mahoney and that at the time he did have sufficient reason to distinguish between right and wrong as to that act, that the defendant is still not guilty for the reason that in consequence of
115 some delusion brought about by mental disease, his will was overmastered so that there was no criminal intent as to the act in question, and that the act of killing Mahoney was connected with the peculiar delusion under which the defendant was acting.

With reference to that contention as to the insanity of the defendant by his counsel, the State insists that the defendant did know that it was wrong for him to do that act which the State claims was done by him, and that the defendant is criminally responsible for the reason that at the time he did have sufficient mental capacity to know the distinction between right and wrong with reference to that act; the State further contending in reference to the contention of the defendant as to the delusional insanity that the defendant did not act under the impulse of any delusion; the State contending that he acted not under any delusion, but from malice from a state of facts which did actually exist, and that inasmuch as no delusion existed in the mind of the defendant that the defendant is guilty of the crime of murder.

With reference to the respective contentions of the State and the defendant the court neither expresses an opinion nor intimates any opinion upon the facts in the case. It is entirely the province of the jury to determine what the truth of the case is and to pass upon every issue in the case between the State and the defendant.

Whenever the State proves a homicide by unauthorized violence, and the evidence which the State introduces does not show the want
116 of malice, then the burden is cast upon the defendant. He assumes the burden, then, to prove that he had no malice; unless the evidence of the State that proves the homicide shows that it was done with malice, then the defendant assumes the burden of showing to the jury that it was done without malice. In this case the defendant assumes the burden because he says he did not have capacity enough to entertain malice. If the evidence shows beyond a reasonable doubt that the defendant killed the deceased Mahoney by unlawfully cutting and stabbing him with a knife, and that it was done in this county prior to the finding of the bill of indictment, and there is not in the case anything which shows any mitigation or justification of the act, then the burden would be upon the defendant to show that he was without criminal responsibility for that act. He seeks to do that by the interposition of a plea of insanity and introduces evidence upon that subject under the plea of not guilty entered in the case.

On that subject I charge you this: That the law presumes every man sane until it is made to appear to the contrary that he is insane or unsound of mind, and if a man sets up that defense upon a plea of not guilty, if the evidence on the part of the State shows beyond a reasonable doubt that the homicide has been committed by him without justification or mitigation for that act, the burden would then be upon the defendant to show his insanity to the satisfaction of the jury. He should show them to a reasonable certainty that at the time of the com-
117 mission of the act he did not know the nature and quality of the act, or if he did know the nature of the act that he did not know

the act was wrong, or else that he was acting under some insane delusion which destroyed his freedom of will, which prevented the operation of his will as the result of mental disease, in consequence of which his will was overmastered, so that no criminal intent was formed in his mind to do the act in question, and that the act done was connected with the peculiar delusion under which the defendant was laboring. If he does that, and shows it to a reasonable certainty by a preponderance of the testimony in the case, then the jury would be authorized to conclude in the case that the defendant had established his plea of insanity in the case, and he would be entitled to be acquitted by the jury upon the ground of his insanity. On the other hand, if he does not establish under the rules of law the fact of his insanity by a preponderance of the testimony in the case, then the jury would not be authorized to acquit the defendant upon the ground of insanity. The general rule on the subject of criminal responsibility, where the defense of insanity is set up under a plea of not guilty, is that one is criminally responsible who has no sufficient reason to distinguish between right and wrong as to the particular act committed by him. An exception to that rule exists in a case where it appears that the accused had sufficient reason to distinguish between right and wrong as to the particular act committed, yet his will, in consequence of some delusion brought about by mental disease, was overmastered, so that there was no criminal intent as to the act in question, and where it so appears that
118 his identical act was connected with the peculiar delusion under which the accused was laboring. The court instructs the jury that a man may have reason and intelligence sufficient to enable him to distinguish and know the difference between right and wrong; he may know that the act he is about to commit is wrong; and yet if, from defect, weakness, or disease of the mind, he is incapable of controlling his act and of resisting the impulse to commit the act, then the act, however great a crime it may be, is not a wilful act and therefore not criminal. Therefore if the jury believe that although the prisoner, I. Minder, at the time of the commission of the alleged crime, knew it was wrong, yet if the jury believe and are satisfied from the evidence in this case that his will power was so impaired by the disease or otherwise as to render him incapable of controlling his acts or resisting the impulse so to do, then the killing of Andy Mahone under such circumstances was not the wilful act of the prisoner, and he should not be held criminally responsible therefor. Was the defendant at the time of the commission of the alleged crime afflicted, as a matter of fact, with a disease of the mind so as to be insane? If such be the case, did he know right from wrong as applicable to the particular act in question? If he did not have such knowledge, he is not legally responsible. If he did have such knowledge, he may nevertheless no the legally responsible if the two following conditions occurred: (1) If by reason of the duress of such mental diease he had so far lost the
119 power to choose between right and wrong and to avoid doing the act in question, as that free agent was at the time destroyed. (2) And if at the same time the alleged crime was so connected with such mental disease in the relation of cause and effect as to have been the produce of it solely. If the jury believe in the case, however, that the deceased was not killed by the defendant in the case, if the evidence does

show beyond a reasonable doubt that the defendant did kill the deceased as the result of the same delusion brought about by a disease of the mind, and believe on the subject of insanity that the evidence in the case does not show to a reasonable certainty that he did not have sufficient mental capacity to understand the difference between right and wrong as to the particular act of killing Mahoney, then you would not be authorized to acquit the defendant on the ground of insanity in the case; and in that connection I charge you that if he was not laboring under that delusion of an impulse that was irresistible, the result of a disease or disordered mind, which overpowered his will; if he was not laboring that way, but acted only from violent passions and resentments towards Mahoney and upon real circumstances—no delusion about it, but upon real circumstances, and was impelled by no morbid delusion, but proceeded upon ordinary perceptions of the mind—then he would be responsible and you would be authorized to find him guilty.

If, after a full, fair, honest examination of the evidence your minds are unsettled, unsatisfied, you do not know what the truth of it is, then that is what is called a reasonable doubt, and you should give him the
120 benefit of that reasonable doubt and acquit him. If your minds are legally certain and are *are* satisfied from the evidence in this case that he is guilty, then you would be authorized to find him guilty of the offense of murder. In this case should you find the defendant guilty of murder and do not recommend that he be confined in the penitentiary for life, the form of that verdict will be, "We, the jury, find the defendant guilty." The effect of that verdict will be that the court would pronounce upon the defendant the infliction of the death penalty. If the jury trying the case believe that the evidence shows beyond a reasonable doubt the guilt of the defendant, but recommend that the death penalty should not be inflicted upon him, but that his punishment shall be confinement in the penitentiary for life, then the form of your verdict is, "We, the jury, find the defendant guilty, and recommend that he be imprisoned in the penitentiary for life." If you believe in the case that the evidence shows to a reasonable certainty the facts of the insanity of the defendant under the rules of the law given you in charge, and when I say to a reasonable certainty I mean a reasonable certainty by a preponderance of the evidence in the case, then it would be your duty to aquit the defendant on the ground of insanity; or if the jury have, after a careful consideration of the case, a reasonable doubt of his guilt, it would be your duty to acquit the defendant, the form of the verdict being, "We, the jury, find the defendant not guilty."

You may retire.

The foregoing charge is approved as the correct charge given
121 in the case of the State *v.* I. Minder. April 15th, 1901.

W. H. Felton, Jr., *J. S. C. M. C.*

We, the jury, find the defendant guilty. March 11th, 1901.

J. W. Willis, *Foreman.*

THE STATE
v. } Indictment for murder.
I. MINDER.

In Bibb superior court, November term, 1900. Verdict of guilty.

The jury empannelled and sworn to try this case having found the defendant, I. Minder, guilty, and no reason being shown why the sentence of the court should not be pronounced:

It is therefore considered, ordered, and adjudged by the court that you, I. Minder, be taken from the bar of this court to the common jail of Bibb County, when you shall be safely kept until the 30th day of April, 1901, on which day, and between the hours of 10 o'clock a. m. and 4 o'clock p. m. you shall be by the sheriff of said county taken to the gallows erected within the jail and there upon said gallows you shall be by the sheriff hanged by the neck until you are dead; and may the Lord have mercy on your soul.

It is further ordered that said execution be done privately, and that no one shall be admitted thereto except such guards as may be necessary and two clergymen, and such members of the family of said I. Minder as he may desire to be present.

It is further ordered that the sheriff procure the attendance of two reputable physicians to determine when death supervenes.

Pronounced in open court this March 12th, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

122 THE STATE
v. } Indictment for murder.
I. MINDER.

In Bibb superior court, verdict of guilty, November term, 1900, and motion for new trial.

The above-stated motion coming on to be heard on the 15th inst., in pursuance of the orders regularly granted and the hearing continuing until this day:

After considering the grounds thereof it is ordered that the motion for a new trial be overruled on all the grounds therein stated and the new trial denied. This April 18th, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

I. MINDER, PLAINTIFF IN ERROR,
v. }
THE STATE OF GEORGIA, DEFENDANT IN ERROR.

Writ of error to the supreme court of Georgia from Bibb superior court.

GEORGIA, BIBB COUNTY:

Now comes I. Minder, the plaintiff in error in the above-stated case, who, being duly sworn, deposes and says on oath that owing to his poverty he is unable to pay the costs in said case and that his counsel has

advised him that he has good cause for writ of error to the supreme court of Georgia.

I. MINDER.

Sworn to and subscribed before me this the 13th day of May, 1901.

P. H. LAMB,
N. P., Bibb Co., Ga.

GEORGIA, BIBB COUNTY,
Clerk's Office Superior Court:

123 I, Robert A. Nisbet, clerk of said court, do certify that the foregoing 98 pages contains a true copy of the record as specified in the bill of exceptions in the within-stated case, as material to a clear understanding of the errors complained of, and that the term of court at which said case was tried adjourned on the 29 day of March, 1901.

Witness my official signature and seal of office this 16th day of May, 1901.

[Seal of the superior court of Bibb County, Ga.] ROBT. A. NISBET, *Clerk.*

No. 39 crimial docket, March term, 1901. Supreme court of Georgia. Minder v. The State. Transcript of record. Filed in office May 17, 1901. Logan Bleckley, D. C. S. C. Ga.

124 MINDER
v.
THE STATE.

By the COURT. Even if refusing to continue a criminal case because of the absence of material witnesses for the accused who reside in another State is, under any circumstances, cause for a new trial, it certainly is not when it appears that the court unsuccessfully employed all the power at its command to procure the attendance of these witnesses. It is not within the power of a court of this State to send its officers beyond the territorial limits of this State, with a view to enforcing the attendance of nonresident witnesses upon such court. The failure of the law to provide a method for enforcing the attendance of nonresident witnesses, or for the procuring and reception of their depositions, is not, in a particular case, a denial to the accused of the equal protection of the laws, or a deprivation of his life or liberty without due process of law.

2. The charge of the judge presented with sufficient fullness and clearness, not only the general rule applicable to the defense of insanity at the time of the killing, but also the rule relating to delusional insanity. It was not essential in charging the jury on this branch of the law for the court to use the term "paranoia," but enough if the principle involved was plainly stated to the jury.

3. In order to sustain the independent defense of insanity at the time of the commission of an alleged criminal act, it is incumbent upon
125 the accused to prove that he was insane at that time; and an instruction that he must prove this to a "reasonable certainty" is not erroneous, when the jury are distinctly informed that a preponderance of the testimony is all that is requisite to establish such reasonable certainty.

4. The assignments of error in the motion for a new trial not referred to above presented no sufficient reason for granting a new trial. The case was fairly submitted to the jury, the evidence authorized the verdict, and the discretion of the trial judge in refusing to grant a new trial will not be interfered with.

COBB, J. Minder was placed on trial upon an indictment charging him with the offense of murder, and, having been convicted, was sentenced to death. His motion for a new trial was overruled and he excepted.

1. In one of the grounds of the motion for a new trial complaint is made that the court erred in refusing to continue the case. The application for a continuance was made upon the ground of the absence of certain witnesses whose testimony it is claimed was very material to the defense of insanity set up by the accused. It appeared that these witnesses resided in the State of Alabama; that the court had caused subpœnas to be issued directed to these witnesses; that they had been transmitted by mail to the witnesses; that the subpœnas had been received by them, and that they had refused to attend court upon the advice of their counsel in Alabama that there was no law requiring them to leave their State to attend as witnesses a court of another State. It
126 distinctly appeared that the witnesses had refused to attend, and there is nothing in the record to indicate that there were any reasonable grounds for hoping that they might be induced to attend at a subsequent term of the court if the case had been continued. Under such circumstances it does not seem to us that the court erred in refusing to postpone the case. In a case of this character, where the life of the accused is at stake, and the court has at its command no compulsory process which could be used to enforce the attendance of the witnesses from beyond its jurisdiction, a promise by the witnesses to attend at a subsequent term of the court might address itself very strongly to the discretion of the trial judge and authorize him to continue the case; but certainly there is no abuse of discretion when the witnesses are beyond the jurisdiction of the court and beyond the power of its process, and not only refuse to attend voluntarily, but give no indication that they will at any time in the future be willing to attend upon the sessions of the court. It was argued here that the court should have sent an officer into the State of Alabama and served each of the witnesses personally with subpœnas. We do not think the court had any authority to do this, even if there was no impropriety in an officer of this State going into the State of Alabama and making personal service of a paper. The courts of this State are under no obligations to litigants to send their officers beyond the limits of the State to do acts which would be purely voluntary on the part of such officers; and certainly the court should not use one of its officers
127 in this way when the sole purpose in so doing would be to produce a species of moral coercion upon a citizen of another State to come into this State when he is not required by law to do so, and would have a right to ignore the command of the court thus transmitted to him. The point was made in the court below, and was argued here, that the failure of the law of this State to provide a method for compelling the attendance of witnesses from beyond the jurisdiction of the State, or for obtaining the depositions of such witnesses and allowing them to be introduced in

evidence in behalf of a person charged with crime, was a denial to such person of the equal protection of the laws, and his conviction under such circumstances would be depriving him of life or liberty, as the case may be, without due process of law, in violation of the 14th amendment to the Constitution of the United States. We do not see how a person on trial could be said to be denied the equal protection of the laws when he is tried under laws of procedure applicable to every person charged with crime. Nor can we see how a person is deprived of life or liberty without due process of law on account of not having the benefit of the testimony of witnesses who are beyond the jurisdiction of the court, when the law-making power of the State is powerless to make any provision which would result in the compulsory attendance of the witnesses, and the use of depositions in such cases is directly contrary to the usages, customs, and principles of the common law.

2. Complaint was made that the court did not in its charge fully
128 cover all of the contentions of the accused bearing upon the defense set up by him of delusional insanity, and did not explain to the jury what was meant by paranoia, or delusional insanity. An examination of the charge has satisfied us that the judge clearly stated to the jury, not only the proper rule applicable to the defense of insanity at the time of the killing, but also the rule relating to delusional insanity, sometimes denominated paranoia. It is true that nowhere in his charge did the judge use the term paranoia, but the charge contained a clear exposition of the law applicable to the defense of delusional insanity; and under the charge the jury could not have had any misunderstanding as to the contention of the accused.

3. Complaint is further made that the court erred in charging the jury that when the accused relies upon the defense of insanity, he must prove the truth of this defense to a "reasonable certainty." While the court did use the expression quoted, the charge clearly indicates that it was used as the equivalent of the expression "preponderance of the evidence," for in another part of the charge the judge instructed the jury that if the accused "proves his insanity to a reasonable certainty by a preponderance of the testimony in the case," the jury will be authorized to acquit. When the charge is considered as a whole we do not think there is anything in the use of the expression "reasonable certainty" to mislead the jury, even if reasonable certainty would require a higher degree of mental conviction than that brought about by a preponderance of the evidence.

4. We have examined carefully all of the numerous assign-
129 ments of error in the motion for a new trial, and none of them, other than those above referred to, require any extended discussion. The charge of the judge, when taken as a whole, appears to be free from error, and we are certain that none of the assignments of error on the portions of the charge set out in the motion for a new trial are well taken. There appears to have been no error committed in the rulings on evidence complained of, but even if there was any error in the admission of any of the testimony which was objected to, the error so committed was not of such a character as to require the granting of a new trial. The deceased was an Irishman; the accused was a Jew, and undoubtedly a man weak both in mind and body, but not to such an extent as to be irresponsible. The deceased seems to have been thoroughly imbued with

an antipathy to Jews in general, and to the accused in particular, and never lost an opportunity to insult by language and place upon the accused indignities which were hard to bear. The evidence authorized an inference that, on account of the overbearing conduct of the deceased toward the accused at different times, the accused was in mortal dread of him, and his mere presence would sometimes throw the accused into a highly excited and nerveous condition. At different places at which the accused lived the deceased had lived, and his conduct toward the accused had been that which was calculated to insult and degrade. He was goaded in a manner that was pitiable, and in a fit of desperation he took the life of his persecutor. Under the law he was guilty of murder. The jury were authorized to so find; the trial judge has approved this finding,
130 and we have no authority to interfere. We would, however, have been better satisfied, in affirming the judgment of the court in refusing to grant a new trial, had the jury seen fit, in the exercise of the authority which the law vests in them, to commute the penalty to life imprisonment. That, however, is a matter which is, under the law, left to the jury, and neither the trial judge nor this court has a right to change the punishment which the law prescribes. If a mistake has been made, and this is one of those cases where the penalty should be imprisonment instead of death, the accused is without a remedy, so far as the judicial department of the Government is concerned, and must make his appeal to the Executive.

Judgment affirmed. All the justices concurring.

131 Supreme court of the State of Georgia.

ATLANTA, GA., *July 18, 1901.*

The honorable supreme court met pursuant to adjournment.

The following judgment was rendered:

I. MINDER
versus
THE STATE.

This case came before this court upon a writ of error from the superior court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the justices concurring.

Bill of costs, $10.00.

132 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
Atlanta, August 28, 1901.

I hereby certify that the foregoing pages hereto attached contain a true copy of the entire record in the case of I. Minder *v.* The State, said record consisting of the original bill of exceptions, the transcript of record, the opinion and judgment of the supreme court, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[SEAL.] Z. D. HARRISON, *Clerk.*

133 THE STATE }
vs.
I. MINDER. }

On motion of the solicitor-general it is ordered that the within remittitur be entered on the minutes of this court, and the judgment of the supreme court be made the judgment of this court, and that the State recover of the defendant for use of officers of court the costs in this behalf incurred to be taxed by the clerk.

Bibb superior court, August 5th, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

134 THE STATE, }
vs. } Indictment for murder.
I. MINDER. }

In Bibb superior court, April term, 1901.

The remittitur of the supreme court in the above-stated case affirming the judgment of this court having been received and made the judgment of this court, and no reason being shown why the sentence of the court should not now be pronounced;

It is therefore considered, ordered, and adjudged by the court that you, I. Minder, be taken from the bar of this court to the common jail of Bibb County, where you shall be safely kept until the 6th day of September, 1901, on which day and between the hours of 10 o'clock a. m. and 2 o'clock p. m. you shall be by the sheriff of said county taken to the gallows erected within the jail, and upon said gallows you shall be by said sheriff hanged by the neck until you are dead, and may the Lord have mercy on your soul.

It is further ordered that said execution be done privately and that no one shall be admitted thereto except such guards as may be necessary and such members of the family of said I. Minder as he may desire to be present.

It is further ordered that the sheriff procure the attendance of two reputable physicians to determine when death supervenes.

Pronounced in open court this 5th day of August, 1901.

W. H. FELTON, Jr., *J. S. C. M. C.*

135 GEORGIA, BIBB COUNTY,
Clerk's Office, Superior Court:

I, B. J. Holt, depaty clerk of said court, do certify that the foregoing two pages contains a true copy of the sentence of the court passed on I. Minder, and the order making the remittitur of the supreme court the judgment of this court.

Witness my official signature and seal of office this the 27th day of August, 1901.

[SEAL.] B. J. HOLT, *Deputy Clerk.*

136 In the Supreme Court of the United States.

L. MINDER
vs.
THE STATE. } Writ of error to the supreme court of Georgia.

UNITED STATES OF AMERICA.

GEORGIA, *Bibb County:*

Know all men by these presents, that we, I. Minder, as principal, and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the State of Georgia, and unto A. D. Candler, governor thereof, and his successors in office, in the sum of two hundred and fifty dollars, to be paid unto the State of Georgia, and its governor, his successors and assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns firmly by these presents.

Sealed with our seal and dated the 30th day of August, 1901.

Whereas the aboved-named I. Minder has sued out a writ of error from the Supreme Court of the United States, to reverse the judgment in the above-entitled cause, rendered by the supreme court of the State of Georgia.

Now, therefore, the condition of this obligation is such that if the above-named I. Minder shall prosecute said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain full force and virtue.

I. MINDER, [L. S.]
By his Attorney of Record, Marion W. Harris.

137 THE UNITED STATES FIDELITY & GUARANTY CO.,
By T. B. WEST, *Atty.* [L. S.]
J. J. COBB, *Atty.*

Signed and sealed in my presence—
C. A. GLAWSON, *Notary Public, Bibb County, Georgia.*

I certify that said United States Fidelity & Guaranty Company has filed in the district court of the United States for the southern district of Georgia a certified copy of its authorization to do business therein, issued by the attorney-general under the act of Congress approved August 13th, 1894, and that said security is sufficient.

This August 30th, 1901.

[OFFICIAL SEAL.]
L. M. ERWIN,
Deputy Clerk United States District Court,
Southern District of Georgia.

The foregoing bond approved by me this the 3rd day of September, 1901.

E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

Filed in office September 14th, 1901.

ROBT. A. NISBET, *Clerk.*

138 STATE OF GEORGIA, COUNTY OF BIBB,
Office of the Clerk of the Superior Court of said County.

I, Robert A. Nisbet, clerk of said court, do certify that the above and foregoing pages hereto attached contains a true copy of the entire record and proceedings, with all things concerning the case of I. Minder vs. The State, as the same appears of record in said superior court of Bibb County, Georgia; and also a true copy of the original writ of error bond in said case, which original bond is now of file in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this the 24th day of September, 1901.

[SEAL.] ROBT. A. NISBET,
Clerk Superior Court, Bibb County, Georgia.

139 (Indorsed:) File No. 39, criminal docket, March term, 1901. Supreme court of Georgia. Minder versus The State. Transcript of record. Filed in office Sept. 14th, 1901. Robt. A. Nisbet, clerk superior court, Bibb Co., Ga.

140 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable the judge of the superior court of Bibb County, State of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court on a remittitur from the supreme court of the State of Georgia before you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between The State of Georgia, plaintiff, and Isadore Minder, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a
141 clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the third day of September, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

142 (Indorsed:) Filed in office September 14th, 1901. Robt. A. Nisbet, clerk.

143 UNITED STATES OF AMERICA, ss:

To the State of Georgia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the superior court of Bibb County, State of Georgia, wherein Isadore Minder is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this third day of September, in the year of our Lord one thousand nine hundred and one.

E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

144 On this 13 day of September, in the year of our Lord one thousand nine hundred and one, personally appeared Jno. R. Cooper before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Gov. Allen D. Candler, and J. M. Terrell, atty. general, and Wm. Brunson, sol. gen.

Sworn to and subscribed the 13 day of September, A. D. 1901.

JOHN R. COOPER,
Atty. for Def. Minder.

[SEAL.] W. M. WILEY,
Ordinary, Bibb County, Ga.

Due and legal service of the within citation hereby acknowledged. Copy of same recd. this Sept. 13th, 1901.

J. M. TERRELL,
Atty. Genl. of Georgia.
A. D. CANDLER,
Governor of Georgia.
WM. BRUNSON,
Solicitor-General, Macon Circuit.

(Indorsed:) Filed in office September 14th, 1901. Robt. A. Nisbet, clerk.

145 In the Supreme Court of the United States.

ISADORE MINDER, PLAINTIFF IN ERROR,
vs.
THE STATE OF GEORGIA, DEFENDANT IN error.

In error to the supreme court of Bibb County, Georgia.

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the 3rd day of October, in the year 1901, at the Capitol, in the city of Washington, and in the Supreme Court of the United States, comes Isadore Minder and says that in the records and proceedings in the superior court of Bibb County, Georgia, in the above-entitled cause, there was manifest error, in this, to wit:

(1) The supreme court of Georgia erred in its judgement affirming the judgement of the superior court of Bibb County.

(2) The supreme court of Georgia erred in failing and declining to reverse the said judgement of the superior court of Bibb County upon the error assigned in its refusal to grant defendant's motion for continuance, as set out in the record.

The denial of said motion to continue was a denial to the defendant of due process of the law, such as is required by Section I, Article XIV, of the amendments to the Constitution of the United States; and was a denial to the defendant of the equal protection of the law, as required by Section I, Article XIV, of the amendments to the Constitution of the United States.

(3) The supreme court of Georgia erred in holding and deciding that, "even though refusing to continue a criminal case because of the absence of material witnesses for the accused, who reside in another State, is under any circumstances cause for a new trial, it certainly is not when it appears that the court unnecessarily employed all the power at
146 its command to procure the attendance of these witnesses. It is not within the power of a court of this State to send its officers beyond the territorial limits of this State with the view of enforcing the attendance of nonresident witnesses upon such court. The failure of the law to provide a method for enforcing the attendance of nonresident witnesses, or for the procuring and reception of their depositions, is not, in a particular case, a denial to the accused of the equal protection of law, or a deprivation of his right of life or liberty without due process of law." The error in this decision is that the failure of the law to provide within the State of Georgia a method for enforcing the attendance of nonresident witnesses, or else for the procuring and reception of their depositions in behalf of the defendant, is a denial to him of the due process of the law to establish his rights in the trial of his case under Section I, Article XIV, of the amendments to the United States Constitution, and the failure and refusal of the State to afford a means or method for procuring and allowing to be introduced in evidence in behalf of the defendant the depositions of nonresident witnesses is a denial to the defendant of the equal protection of the laws with other citizens of the United States in other States of the United States, where such means and methods for procuring and introducing in evidence the depositions of nonresident witnesses in behalf of the defendant on trial are afforded.

(4) Because by the decision of the supreme court of Georgia refusing to reverse the judgement of the superior court of Bibb County, for the several reasons set out in defendant's motion for new trial as it appears in the record, and particularly the ground of the motion for a new trial relating to the motion for continuance on the ground of the absence of the nonresident witnesses, and on the ground of the failure of the State of Georgia to afford by its laws a means and method of procuring their depositions in behalf of the defendant, the defendant, Isadore Minder, as a citizen of the United States, was denied by the State of Georgia a fair, impartial, and speedy trial of his case, as guaranteed him by the Constitution of the United States; was denied a right guaranteed him by the XIV amendment of the United States Constitution to
147 require of the State of Georgia that it afford him some means or process to secure the testimony of said absent witnesses; that it denied to him as a citizen of the United States his right and privilege under the XIV amendment to the United States Constitution to have said nonresident witnesses present in court during his trial, or else to have their depositions admitted in evidence in his favor upon his trial; and because it denied him the right to secure and introduce testimony upon the trial of his case where his life was involved; and was a denial to him, as a citizen of the United States, the equal protection of the laws with citizens of other States who are accorded such rights, viz, to introduce by depositions evidence of nonresident witnesses.

Wherefore, plaintiff in error prays that the judgement of the superior court of Bibb County, as affirmed by the Supreme Court of Georgia in said case, be reversed, annuled, and made to hold for nothing, and that he may be restored to all things which he has lost by reason of said judgement, and that such other judgement and direction be had from this honorable court as may be necessary and proper in the premises.

This September 14, 1901.

JOHN RANDOLPH COOPER,
HERMAN BROSCH,
MARION W. HARRIS,
Counsel for the Plaintiff.

Post-office address of counsel, Macon, Georgia.

GEORGIA, BIBB COUNTY,
Clerk's office superior court:

I, Robert A. Nisbet, clerk of said court, do certify that the foregoing three pages constitutes the original assignment of errors in the within-stated case, just as the same was filed in said clerk's office.

Witness my official signature and seal of office this 24th day of September, 1901.

[SEAL.] ROBT. A. NISBET, *Clerk.*

(Indorsed:) Filed in office September 14th, 1901. Robt. A. Nisbet, clerk superior court Bibb Co., Ga.

(Indorsement on cover:) File No. 18270. Georgia, Bibb County, superior court. Term No. 417. Isadore Minder, plaintiff in error, vs. The State of Georgia. Filed September 28th, 1901. Office Supreme Court of U. S. Received Sep. 27, 1901.

FILED
OCT 11 1901
JAMES H. McKENNEY,
Clerk.

No. 417.

Motion to Proceed in forma pauperis.

Filed Oct. 11, 1901.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 417 OCTOBER TERM, 1901.

WRIT OF ERROR TO THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA.

ISIDORE MINDER, PLAINTIFF IN ERROR,

versus

THE STATE OF GEORGIA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPERIOR COURT OF [redacted]
COUNTY, STATE OF GEORGIA.

BRIEF OF

John K. Cooper, Herman Brandt and Marion W. Harris

Counsel for Plaintiff in Error.



32444

IN THE SUPREME COURT OF THE UNITED STATES.

ISADORE MINDER,
Plaintiff in Error.

vs.

STATE OF GEORGIA,
Defendant in Error.

October Term, 1901, No. 417. In error to the Superior Court of Bibb County, State of Georgia.

BRIEF OF JOHN R. COOPER, HERMAN BRASCH AND MARION W. HARRIS, COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

In November 1900, Isadore Minder was convicted of murder in the Superior Court of Bibb County, and sentenced to death. After such conviction and sentence he made a motion for new trial in that Court as provided by the law of Georgia, which was refused, and his case was then taken by writ of error to the Supreme Court of Georgia, returnable with the March Term, 1901, and was assigned for a hearing in June, 1901. On the 18th day of July, 1901, the Supreme Court of Georgia affirmed the Superior Court of Bibb County, and the judgment of the Supreme Court of Georgia was made the judgment of Bibb Superior Court on the 5th day of August, 1901, at which time Judge William H. Felton sentenced Isadore Minder to hang on the 6th day of September, 1901. In the meantime the defendant Isadore Minder made application for a writ of error to the Supreme Court of the United States, and the writ was granted by Mr. Justice Edward D. White, on the 3d day of September, 1901. Notice being brought to the attention of the Governor of Georgia that a writ of error

had been granted to Isadore Minder by the Supreme Court of the United States, he suspended the sentence of death against Isadore Minder indefinitely.

BRIEF OF ARGUMENT.

The action of the Supreme Court of Georgia in affirming Bibb Superior Court in said case was contrary to the Constitution of the State of Georgia and the Constitution of the United States. Because by the decision of the Supreme Court of Georgia, refusing to reverse the judgment of the Superior Court of Bibb County, for the several reasons set out in Defendant's motion for new trial as it appears in the record, and particularly the ground of the motion for new trial relating to the motion for continuance on the ground of the absence of non-resident witnesses, and on the ground of the failure of the State of Georgia to afford by its laws a means and method of procuring depositions in behalf of the defendent, the defendant, Isadore Minder, as a citizen of the United States, was denied by the State of Georgia a fair, impartial and speedy trial of his case, as guaranteed him by the Constitution of the United States; was denied a right guaranteed him by the XIV. amendment of the United States Constitution to require the State of Georgia that it afford him some means or process to secure the testimony of said absent witnesses; that it denied to him as a citizen of the United States his right and privilege under the XIV. amendment to the United States Constitution to have said non-resident witnesses in Court during his trial, or else to have their depositions admitted in evidence in his favor upon his trial; and because it denied him his right to secure and introduce testimony upon his trial, where his life was involved; and was a denial to him, as a citizen of the United States, the equal protection of the laws with citizens of other States who are accorded such rights, viz., to introduce by depositions evidence of non-resident witnesses.

2. It was error for the trial judge to overrule the motion of the defendant, Isadore Minder to continue his case on the ground of the absence of non-resident witnesses. The judge should have granted the motion under the circumstances.

Counsel showed that these absent witnesses, would swear if they were present to the insanity of the accused, and so the Supreme Court of Georgia ought to have granted the defendant, a new trial.

65 Ga. 332.
100 Ga. 529.
30 Ga. 10.
101 Ga. 559.
Clark's Cr. Procedure 414.

3. The prisoner had a constitutional right to the compulsory process of the attendance of his witnesses. So if he is executed he will be deprived of his life without due process of law and without the equal protections of the law with citizens of other states of this union.

Section 1, Fourteenth Amendment of the Federal Constitution: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protections of the laws."

By this clause, the Fourteenth Amendment secured to every citizen of the United States the guaranty that his privileges and immunities as such citizen should not be abridged by any State; and it imposed, as a further specific restraint on State action, the time-honored provision of the Fifth Article of Amendment, that no man should be deprived of life, liberty, or property without due process of law, or what is its equivalent *lex terrae*, the law of the land, the famous provision contained in Magna Charta. But the framers went further, and adopted another clause, in language new to our constitutions: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws." This clause has been declared by the Supreme Court to be "a pledge of the protection of equal laws."

Article VI. of the United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been commit-

ted, which district shall have previously been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him and have compulsory process for obtaining witnesses, in his favor; and to have the assistance of counsel for his defense.

Article I., Section 1, paragraph 3, of the Constitution of the State of Georgia:

"No person shall be deprived of life, liberty, or property, except by due process of law."

Article I., Section 1, paragraph 5, of the Constitution of the State of Georgia:

"Every person charged with an offense against the laws of this State shall have the privilege and benefit of counsel, shall be furnished, on demand, with a copy of the accusation; and a list of the witnesses on whose testimony the charge against him is founded; shall have compulsory process to obtain the testimony of his own witnesses; shall be confronted with the witnesses testifying against him, and shall have a public and speedy trial by an impartial jury."

Fourteenth Amendment of the Constitution of the United States by Guthrie, page 27: "It is the shield which the arm of our blessed government holds at all times over every one, man, woman, and child, in all its broad domain, wherever they may go and in whatever relations they may be placed. No State—such is the sovereign command of the whole people of the United States—no State shall touch the life, the liberty, or the property of any person, however humble his lot or exalted his station, without due process of law; and no State, even with due process of law, shall deny to any person within its jurisdiction the equal protection of the laws."

Judge Story said in his great work on the Constitution: "What is to become of constitutions of government if they are to rest, not upon the plain import of their words, but upon conjectural enlargements and restrictions, to suit the temporary passion and interest of the day? Let us never forget that our constitutions of government are solemn instruments, addressed to the common sense of the people, and designed to fix and perpetuate their rights and their liberties.

They are not to be frittered away to please the demagogues of the day. They are not to be violated to gratify the ambitions of political leaders. They are to speak in the same voice now and forever. They are no man's interpretations. They are ordained by the people, and can be changed only by the sovereign command of the people."

Fourteenth Amendment of the Constitution of the United States, by Guthrie, page 114. "No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

4. No State in this Union shall deprive a citizen of his life, liberty or property without due process of law, nor deny to any citizen the equal protection of the laws. Due process of law is process of law according to the law of the land.

181 United States vs. Barber Asphalt Paving Co. 330, 331, 334, 335.

182 U. S., Simon vs. Craft, 427.

118 U. S., Yickwo vs. Hopkins, 369, 374.

96 U. S., Davidson vs. New Orleans, 102.

165 U. S., Meyer vs. Louisiana, 578.

Cooly on Constitution limitations, 351.

181 U. S., Mallet vs. N. C. 599.

5. There is no law on the statute books of Georgia by which depositions can be taken from non-resident witnesses in capital cases. This is a defect in the criminal laws of Georgia. Georgia is far behind New York, Tennessee, Texas and other States of this Union in that respect.

6. It is within the power of each State of this Union to try and punish her own citizens according to her laws as long as the authority does not infringe upon the limited power of the Constitution of the United States.

114 U. S., *ex parte* Reggel, page 642.

7. A person accused of crime has a right to process to compel the attendance of witnesses in his behalf.

8 West. Rep. 575.

91 Mo. 228.

8. The contitutional guaranty that persons accused of crime shall have compulsory processs for obtaining witnesses

in their favor includes, as an essential to the enjoymont of the right, reasonable time for making such process effectual, and a statute whose effect is to bring the defendant to trial before he has had a proper opportunity to obtain his witnesses is unconstitutional and void.

Graham vs. State, 50 Ark. 161.
Berkly vs. State, 10 West. Rep. 67.

9. Prior to the adoption of the fourteenth amendment to the United States Constitution, the first ten amendments to that Constitution were mere limitations upon federal power, but since the adoption of the fourteenth amendment, all the privileges and immunities laid down in this amendment have fallen under the protection of the general government by virtue of the fourteenth amendment; under the sixth amendment to the United States Constitution it is provided that the accused "shall have compulsory process for obtaining witnesses in his favor;" this right has now been enlarged and extended by the fourteenth amendment beyond the mere guaranty of it to a person charged with crime in the United States Courts, and has become under that amendment a guaranteed right to every citizen of every State, charged with crime in the State Courts.

This question was raised in the case of Spies against Illinois, 123 U. S. Rep. pages 131, 151, 152, 123, 166, 180, 181, where Spies claimed that the fourteenth amendment protected him from an unlawful search and seizure of his papers and from the use of such papers as evidence on a trial in the State Court.

See also full discussion of this question in Landon's Constitutional History, pages 102, 294, 295, 296.

10. The record in this case does not show that Minder was present in Court when the sentence of death was passed upon him, nor does it show that he was asked by the Court if he had any reason to urge against the imposition by the Court of the sentence of death; this is a failure of due process of law as guaranteed by the fourteenth amendment and the judgment against the prisoner is fatally defective for the reason

and if he should be hung under it, he would be deprived of his life in violation of the fourteenth amendment to the Constitution of the United States.

Ball vs. United States, 140 U. S., p. 119, 129, 130.
Schwab vs. Berggren 143 U. S., p. 442, 448.
9 Vol. Am. Cr. Rep, French vs. State 348.
3 Vol. Am. Cr. Rep. 304.
87 Ga. 584,
67 Ga. 653.
55 Ga. 521.
53 Ga. 138.
12 Ga. 25.
2 Vol. 37 S. E. Rep. 966.
60 Ga. 431.
Clark's Criminal Procedure 423.

This is a case that ought to be reversed by this high tribunal on its merits, because the Supreme Court of Georgia said in their opinion that they would have been better satisfied in affirming the Court below if the jury had seen fit to recommend the prisoner to life imprisonment, but said they had no power to reverse the case. The following is part of the opinion of the Supreme Court of Georgia:

"The deceased was an Irishman; the accused was a Jew, and undoubtedly a man weak both in mind and body, but not to such extent to be irresponsible. The deceased seems to have been thoroughly imbued with an antipathy to Jews in general, and to the accused in particular, and never lost an opportunity to insult by language, and place upon the accused indignities which were hard to bear. The evidence authorized an inference that, on account of the overbearing conduct of deceased towards the accused at different times, the accused was in mortal dread of him, and his mere presence would sometimes throw the accused into a highly excited and nervous condition. At different places at which the accused lived the deceased had lived, and his conduct toward the accused had been that which was calculated to insult and degrade. He was goaded in a manner that was pitiable, and in a fit of desperation he took the life of his persecutor. Under the law he was guilty of murder. The jury were authorized to

so find; the trial judge has approved this finding, and we have no authority to interfere. We would, however, have been better satisfied, in affirming the judgment of the Court in refusing to grant a new trial, had the jury seen fit, in the exercise of the authority which the law vests in them, to commute the penalty to life imprisonment. That, however, is a matter which is, under the law, left to the jury, and neither the trial judge nor this Court has a right to change the punishment which the law prescribes. If a mistake has been made, and this is one of those cases where the penalty should be imprisonment instead of death, the accused is without a remedy, so far as the judicial department of the government is concerned and must make his appeal to the executive."

113 Ga., Minter vs. State, 772.

11. Mr. Justice Brown said in the case of Downes vs. Bidwell, 182 United States, Rep. page 282.

"We suggest without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinion and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishment; and to such other immunities as are indispensible to a free government.

12. The proposition in brief is this: By Article V. of the Amendments, the United States Government may not deprive a citizen of life, liberty or property, without due process of law. By Article XIV. of the Amendments, this salutary provision is given a further extension. The States may not deprive a citizen of the United States of life, liberty or property, without due process of law. What is due process of law? Article VI., which immediately follows Article V., and which must be construed in *pari meteria* with it in order to deter-

mine what is due process of law in criminal cases, the subject to which it relates, stipulates expressly that the prisoner shall, among other rights, have compulsory process to obtain the attendances of his witnesses. This is a national definition of what constitutes due process of law. It is a conclusive definition. It can be denied to no person under the ægis of the Constitution, and the defect in the case against the prisoner of which he has the right to complain is that neither the Government of the United States nor the government of the State have given him the compulsory power to obtain the attendance of witnesses who live beyond the boundary lines of Georgia or have their testimony by depositions. This power might well have been granted by the State to the extent that the process could be issued and served so far as the State officials could serve it, it could be made effective by the Congress under the authority granted by Article IV. of the original Constitution, which provides, that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof. It cannot well be doubted that this is Constitutional authority to Congress to authorize the subpoena of the State court to run and be effective in any other State just as it is authority to Congress to authorize the record of a judicial proceeding in one State to be made evidence in another State and since Congress and the States have not co-operated to give the person accused of a capital crime this power of obtaining the presence of witnesses beyond the boundaries of the State, such persons when put on trial and convicted are deprived of due process of law in the meaning of the Constitution.

Respectfully Submitted
John R. Cooper
Marion Harris
Counsel for Plaintiffs in Error

UNITED STATES OF AMERICA.

To the Honorable Supreme Court of the United States:

At the November Term, 1900, of the Superior Court of Bibb County, Georgia, I. Minder was tried for the offense of murder, and was convicted therefor and sentenced to death. A motion for new trial was made upon the ground, amongst others, that the Court erred in refusing to continue the case on account of the absence of some material witnesses residing in the State of Alabama—it being shown to the Court that the witnesses had been subpœnaed and refused to attend court upon the advice of their counsel in Alabama that there was no law requiring them to leave their State to attend as witnesses a court of another State. The Court refused to continue the case, as it had no authority to send for such witnesses or compel their attendance. It was then claimed that the failure of the law of Georgia to provide a method for compelling the attendance of witnesses from beyond the jurisdiction of the State, or for obtaining the depositions of such witnesses and allowing them to be introduced in evidence in behalf of a person charged with crime amounted to a denial to such person of equal protection of the laws, and that a conviction under such circumstances would be depriving him of his life without due process of law, in violation of the 14th amendment of the Constitution of the United States. This

Due and legal service of the above and foregoing motion to advance the case of I. Minder against the State of Georgia, pending in the Supreme Court of the United States, is hereby acknowledged and copy of same and all further service of notice relative thereto waived, and consent is hereby given for said motion to be presented at any time Counsel for Defendant in Error may see proper.

This the 4th day of November, 1901.

JOHN RANDOLPH COOPER,
HERMAN BROSCH, and
M. W. HARRIS,
Counsel for Plaintiff in Error.

No. 417.

DEC 2 1901
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Brf. of Terrell for D. E.

No. 417.

Filed Dec 2, 1901.

ISADORE MINDER, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPERIOR COURT OF BIBB COUNTY, STATE OF GEORGIA.

BRIEF AND ARGUMENT OF

J. M. TERRELL,

COUNSEL FOR DEFENDANT IN ERROR.

THE FRANKLIN PRTG. & PUB. CO.
GEO. W. HARRISON, MANAGER
ATLANTA, GA.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 417.

ISADORE MINDER, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

In Error to the Superior Court of Bibb County, State of Georgia.

BRIEF AND ARGUMENT

Of J. M. Terrell, Counsel for Defendant in Error.

STATEMENT OF FACTS.

At the November Term, 1900, of the Superior Court of Bibb County, Georgia, I. Minder was tried for the offense of murder, convicted therefor, and sentenced to death. A motion for new trial was made upon the ground, amongst others, that the court erred in refusing to continue the case on account of the absence of some material witnesses residing in the State of Alabama—it being shown to the court that the witnesses had been subpœnaed and refused to attend court, upon the advice

In Darmouth College Case, 4 Wheat. 518, Webster defined the phrase as follows: "By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

The fourteenth amendment did not create any *new* legal rights, but operated upon legal rights as it found them established, and declared that, such as they were in each State, they should be enjoyed by all persons alike. Ward *v.* Flood, 48 Cala. 36, 17 Am. Rep. 405.

The constitutional requirement of the fourteenth amendment is met if trial is had according to settled course of judicial procedure obtaining in state. What is due process of law in a State is determined by the law of that State. Walker *v.* Sauvinet, 92 U. S. 93. According to this case even trial by a jury in a State court is not insured by the fourteenth amendment. 92 U. S. 92.

"No more under the fourteenth article than previously can the Federal government interfere with the mode prescribed for the trial of State offenses; whatever is established will be due process of law, so that it be general and impartial in operation, and disregard no minor provision of Federal or State Constitution." 2 Story on Constitution (5th ed.) p. 695. And see Brannon on Fourteenth Amendment, pp. 107, 417, 418.

Fourteenth amendment was not designed to interfere with police power of States. Barbier *v.* Connally, 113 U. S. 31; Powell *v.* Pa., 127 U. S. 683. The fourteenth amendment does not limit the power of the State in the prosecution of criminals. *In re.* McKee, 19 Utah 241; *In re* Maxwell, 19 Utah 502.

An ordinance making it unlawful to sell lottery tickets is a police regulation and not repugnant to the constitutional requirement of due process of law, though it provides for arrest, summary punishment and sentence without trial by jury. State *v.* Dobard, 45 La. Ann. 1412, 14 So. 253.

Fourteenth amendment does not give right to indictment by grand jury in felony cases. 110 U. S. 538 (Hurtado *v.* Cala).

Fourteenth amendment does not limit States power over crimes except to guarantee equal justice. Leeper *v.* Texas, 139 U. S. 467, 468. Law in its regular course of administration through courts of justice is due process, and when secured by the law of the State, the constitutional requirement is satisfied; and due process of law is secured by laws operating on all persons alike and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice. Ibid, 468.

The failure of the State of Georgia to provide compulsory process for witnesses beyond the limits of the State is not the fault of the law-making power in Georgia, but can only be charged to the failure of the Constitution of the United States, and of the Acts of Congress passed in pursuance thereof, to provide suitable means for the extradition of witnesses in somewhat the same manner as is provided for the extradition of fugutives from justice.

II.

The motion to continue the case in the Superior Court of Bibb county does not show that the Alabama witnesses were disposed to respect a commission issued by the Superior Court of Bibb county for the purpose of securing their answers to

interrogatories in the case against the plaintiff in error, nor that they would give their depositions in response to any order that might be passed by Bibb Superior Court looking to the securing of their depositions for such case, nor does it show that proper application was made to the Superior Court of Bibb county for an order allowing the evidence of such witnesses to be taken by interrogatories or depositions. Printed Record, pages 4 and 5. also pages 50 and 51.

In the case of McLain *v.* State of Georgia, 4 Ga. 438, the Supreme Court of Georgia left as an open question, to be determined whenever it should arise, whether the trial court could not under proper rules and restrictions, as such court in its discretion might adopt, allow the testimony of a witness residing beyond the jurisdiction of the State to be received in behalf of the defendant in a criminal case by interrogatories and commission.

The decision of the Supreme Court of Georgia in the case now under consideration still leaves open this question.

Until the plaintiff in error duly applies to the courts of Georgia for an order allowing testimony of the Alabama witnesses to be taken by interrogatories or depositions, and satisfies the court that such witnesses will in that manner give their testimony, he should not be heard to say that the laws of Georgia fail to provide him with means for obtaining the same.

In *ex parte* Harding, 120 U. S. 782, this court held that the denial of compulsory process to enable a person charged with crime to obtain witnesses at the trial in the court below, does not invalidate the judgment. It is true in that case that the right was not claimed under the 14th amendment, but under the 6th amendment to the Constitution, which gives to all per-

sons accused of crime the right to have compulsory process for obtaining witnesses in their behalf. This provision of the Federal Constitution is practically the same as that of paragraph 5, section 1, article 1 of the Georgia Constitution.

J. M. TERRELL,
For defendant in error.

Supreme Court of the United States.

No. 417.—October Term, 1901.

Isadore Minder, Plaintiff in Error, vs. The State of Georgia. } In error to the Superior Court of Bibb County, State of Georgia.

[January 6, 1902.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

At the November term, 1900, of the superior court of Bibb County, Georgia, Isadore Minder was tried on an indictment for murder, convicted, and sentenced to death. A motion for new trial was made upon the ground, among other things, that the court erred in refusing to continue the case on account of the absence of material witnesses residing in Alabama, whose names were given. The defense was insanity, and the motion for continuance set forth that the witnesses would testify that the accused was insane; "that all the powers of the court have been exhausted to procure the attendance of said witnesses;" that they had refused to attend; and that the court had no authority under the constitution and laws of the State of Georgia to procure their attendance, or their testimony, and that their depositions would not be admissible in evidence if obtained. The motion further stated that if he were tried "without being afforded process by which either to compel the attendance or to procure the depositions of said witnesses, that defendant, who is a citizen of the United States and a resident of Georgia, would be deprived of his life, liberty, and property without due process of law, and would be denied his right and privilege and immunities as a citizen of the United States in violation of the Constitution of the United States, and particularly the 1st paragraph of the 14th Amendment thereto; and in violation of said amendment would be denied the equal protection of the laws with American citizens of other States of this Union where the State and Federal process affords the defendant means to secure the depositions of non-resident witnesses in capital cases, and the State allows the introduction of such depositions in evidence in behalf of the defendant in such other States." It was further stated that "unless the State will consent to the introduction of depositions from said non-resident witnesses and will afford him a reasonable opportunity to secure the same, petitioner will be denied the equal protection of the laws and will be deprived of his life and liberty without due process of law." The motion for new trial was overruled by the superior court, and

defendant sentenced, whereupon an appeal was taken to the Supreme Court which affirmed the judgment. 113 Ga. 772.

This writ of error was then sued out, and the errors assigned were in substance that the Supreme Court erred in not reversing the judgment of the court below for error in denying the motion for continuance, which denial it was contended was a denial of due process of law and the equal protection of the laws secured by the Fourteenth Amendment. This point was made in the Supreme Court and the matter of the ruling on the motion to continue was disposed of thus:

"The application for a continuance was made upon the ground of the absence of certain witnesses whose testimony it is claimed was very material to the defense of insanity set up by the accused. It appeared that these witnesses resided in the State of Alabama, that the court had caused subpœnas to be issued directed to these witnesses, that they had been transmitted by mail to the witnesses, that the subpœnas had been received by them, and that they had refused to attend court upon the advice of their counsel in Alabama that there was no law requiring them to leave their State to attend as witnesses a court of another State. It distinctly appeared that the witnesses had refused to attend, and there is nothing in the record to indicate that there were any reasonable grounds for hoping that they might be induced to attend at a subsequent term of the court if the case had been continued. Under such circumstances it does not seem to us that the court erred in refusing to postpone the case. In a case of this character, where the life of the accused is at stake, and the court has at its command no compulsory process which could be used to enforce the attendance of the witnesses from beyond its jurisdiction, a promise by the witnesses to attend at a subsequent term of the court might address itself very strongly to the discretion of the trial judge and authorize him to continue the case; but certainly there is no abuse of discretion when the witnesses are beyond the jurisdiction of the court and beyond the power of its process, and not only refuse to attend voluntarily, but give no indication that they will at any time in the future be willing to attend upon the sessions of the court. It was argued here that the court should have sent an officer into the State of Alabama and served each of the witnesses personally with subpœnas. We do not think the court had any authority to do this, even if there were no impropriety in an officer of this State going into the State of Alabama and making personal service of a paper. The courts of this State are under no obligations to litigants to send their officers beyond the limits of the State to do acts which would be purely voluntary on the part of such officers; and certainly the court should not use one of its officers in this way when the sole purpose in so doing would be to produce a species of moral coercion upon a citizen of another State to come into this State, when he is not required by law to do so, and would have a right to ignore the command of the court thus transmitted to him. The point was made in the court below, and was argued here, that the failure of the law of this State to provide a method for compelling the attendance of witnesses from beyond the jurisdiction of the State, or for obtaining the depositions of such witnesses and allowing them to be introduced in evidence in behalf of a person charged with crime, was a denial to such

person of the equal protection of the laws, and his conviction under such circumstances would be depriving him of life or liberty, as the case may be, without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. We do not see how a person on trial could be said to be denied the equal protection of the laws when he is tried under laws of procedure applicable to every person charged with crime. Nor can we see how a person is deprived of life or liberty without due process of law, on account of not having the benefit of the testimony of witnesses who are beyond the jurisdiction of the court, when the law-making power of the State is powerless to make any provision which would result in the compulsory attendance of the witnesses, and the use of depositions in such cases is directly contrary to the usages, customs, and principles of the common law."

The requirements of the Fourteenth Amendment are satisfied if trial is had according to the settled course of judicial procedure obtaining in the particular State, and the laws operate on all persons alike and do not subject the individual to the arbitrary exercise of the powers of government. Because it is not within the power of the Georgia courts to compel the attendance of witnesses who are beyond the limits of the State, or because the taking or use of depositions of witnesses so situated in criminal cases on behalf of defendants, is not provided for, and may not be recognized in Georgia, we cannot interfere with the administration of justice in that State on the ground of a violation of the Fourteenth Amendment in these particulars.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.